

IN RE: PETITION FOR SPECIAL HEARING      \*    BEFORE THE  
       W/S Park Heights Ave., 1650' +/-      \*  
       S of c/l Walnut Avenue                \*    ZONING COMMISSIONER  
       12026-28 Park Heights Avenue        \*  
       4th Election District                 \*    OF BALTIMORE COUNTY  
       3rd Councilmanic District  
       Legal Owner: Evan M. Shifren         \*    Case No. 97-303-SPH  
       Lessee: Hi-Caliber Towing, Inc.  
       Petitioners

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the property located at 12026-28 Park Heights Avenue. The Petition was filed by Evan M. Shifren, property owner and Hi-Caliber Towing, Inc., Lessee. As filed, the Petition sought approval of; (1) the existence of a valid nonconforming fuel service station with accessory vehicle repairs, pursuant to Baltimore County Zoning Regulations (BCZR), Sections 101 and 104 where the subject property has been continuously used or intended to be used for the retail sales of automotive fuel; (2) to determine whether the nonconforming fuel service station and accessory automobile repair uses have been abandoned pursuant to BCZR, Sections 101 and 405.7; and, (3) to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the subject property pursuant to BCZR, Section 405.7.E. The subject property and requested relief are more particularly shown on the plan to accompany the Petition for Special Hearing, dated 1/20/97, which was submitted with the Petition.

After several postponements, the matter was scheduled for public hearing on May 22, 1997. At that hearing, the Petitioner, Evan M. Shifren, appeared and was represented by counsel, Julius W. Lichter, Esquire. Also appearing at the hearing was Michael Vogelstein, Esquire, on behalf of a number of individuals who reside in the community. The attendance

ORDER RECEIVED FOR FILING  
 Date 8/12/97  
 By M. Novak

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sign-in sheets circulated on that date disclosed that numerous individuals appeared both in support of, and in opposition to, the Petition.

At the initial hearing, counsel for the Protestants raised a preliminary Motion, seeking a dismissal of the Petition upon the grounds of res judicata. The hearing was continued and counsel were given an opportunity to submit memoranda on this issue by July 11, 1997. Memoranda were in fact received from both counsel on that date. Additionally, Mr. Lichter's memorandum sought an amendment of the Petition. Specifically, the relief described in paragraph 3 of the original Petition was deleted and, in lieu thereof, the Petitioner sought approval, "That the service garage, as a principal use, has not been abandoned or discontinued pursuant to BCZR Sections 101 and 104".

The hearing was reconvened on August 6, 1997. The parties and their counsel again appeared and oral argument was offered by both sides. For reasons set forth on the record, as will be summarized hereafter, the preliminary Motion offered by counsel on behalf of the Protestants was granted and the Petition dismissed.

A review of the case file discloses that the subject property is zoned R.C.5 and has been so zoned since at least the mid 1980s. That zoning classification does not permit, by either right or special exception, a "fuel service station" nor a "service garage". A fuel service station is defined in Section 101 of the BCZR as, "A structure or land used or intended to be used for the retail sale of automotive fuel." A service garage is defined as "A garage, other than a residential garage, where motor driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale."

The first zoning case on this property came before then Zoning Commissioner Arnold Jablon in case No. 85-167. Following a public hearing, Commissioner Jablon granted nonconforming use status on the property as a

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By

fuel service station. His opinion, which is contained within the County records and speaks for itself, states that the property was used as a fuel service station since 1934. The opinion also states that the property was not historically used as a service garage. The relief granted allowed the fuel service station use to continue, with an accessory vehicle repair service as limited in the Order. Essentially, the nonconforming status conferred on the property grandfathered its use as a fuel service station.

The second case involving this property was instituted in 1993. At that time, a Petition for Special Hearing was filed by Baltimore County, seeking a determination as to whether the nonconforming use conferred by Commissioner Jablon in 1985 has been forfeited. Specifically, it was alleged in the Petition that the use of the property for a fuel service station had been discontinued between the years 1986 through 1988. Pursuant to Section 104 of the BCZR, which regulates nonconforming uses, such uses cannot continue if they are abandoned or discontinued for a period of one year or more.

That Petition (case No. V-93-442-SPH) came before Deputy Commissioner Timothy Kotroco in 1993. By Order of October 18, 1993, Deputy Commissioner Kotroco determined that the use had not been discontinued or abandoned. The matter was timely appealed and the Board of Appeals subsequently conducted its own hearing. By Order of December 9, 1994, the Board issued an opposite opinion, holding that the nonconforming use had been discontinued or abandoned and was, therefore, forfeited. On appeal, Circuit Court Judge John F. Fader II affirmed the decision of the Board on December 28, 1995.

It is the Order of Judge Fader which the Protestants claim bars additional litigation under the theory of res judicata. As both parties cited within their memoranda, that doctrine in a zoning perspective was clearly set out by the Court of Special Appeals in Esslinger v. Baltimore

City, 95 Md. App, 607 (1993). Therein, the Court set forth three tests that need be considered in determining whether res judicata attaches. They are: (1) whether the parties in the present litigation are the same or in privity with the parties in the earlier case; (2) whether there exists a valid final judgment on the merits in the prior case; and (3) whether the claim presented in the current action is identical to the prior action. For reasons fully set forth during my remarks from the bench, I find that res judicata does apply. Clearly, the parties in the present case are the same as in the case which culminated with Judge Fader's Order. Moreover, Judge Fader's Order is obviously a valid final judgment on the merits. Moreover, the claim is the same; to wit, whether the fuel service station nonconforming use conferred by Commissioner Jablon in 1985 was forfeited by the abandonment of the use of the property in that manner.

Counsel for the Petitioner argued that res judicata should not apply. In this regard, reference was made to Section 500.7 of the BCZR which empowers the Zoning Commissioner with wide discretion and authority to conduct hearings and issue Orders as he may see fit. Although this section does, indeed, confer wide discretion and authority, it does not permit the Zoning Commissioner to ignore the law, including the doctrine of res judicata. On this point, the case Fertitta v. Brown, 252 Md. 594 (1968) is controlling.

Moreover, the allegation that the Board's prior decision, as affirmed by Judge Fader, was wrong is of no consequence. As stated in DeMaio v. Lumbermen's Mutual Casualty Co., 247 Md. 30 (1967), it is well established that even if a prior judgment is wrong, if same was final, between the same parties and for the same cause of action, res judicata applies. Moreover, it is significant to note that the judgment rendered in the prior case is judicial in nature. That is, although there is case law to

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Date 1/26/97  
By J. J. G. G.

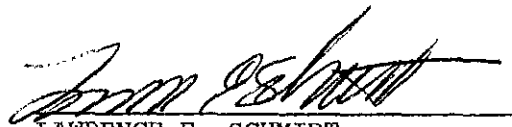


the effect that judgments of administrative boards and bodies may not always trigger res judicata, a judicial judgment, such as the one issued by Judge Fader, clearly does so.

Finally, as to the Petitioner's amendment, same is disposed of by Commissioner Jabon's Order. His Order is unequivocal that the historic use of this property was as a fuel service station and not a service garage. His findings of fact are binding on these parties. Moreover, even if the nonconforming service garage could be established, which would be in direct contradiction to Commissioner Jablon's prior findings, it appears that the Order issued by the Board was conclusive that no business activity of any type occurred on the site during the mid 1980s. Any nonconforming use was, therefore, forfeited by the lack of activity from 1986 through 1988. Therefore, for the reasons set forth hereinabove and as stated in open hearing, the Motion to Dismiss the Petition for Special Hearing must be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 12<sup>th</sup> day of August 1997, that the Petition for Special Hearing be and is hereby DISMISSED.

Any appeal from this decision must be taken in accordance with the applicable provisions of law.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING  
Date 8/20/97  
By M. Hovak

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IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATION OF	*	
EVAN M. SHIFREN /HI-CALIBER	*	COUNTY BOARD OF APPEALS
TOWING, INC. FOR A SPECIAL	*	
HEARING ON PROPERTY LOCATED	*	OF
ON THE W/S PARK HEIGHTS AVE.,	*	
1650' +/- S OF C/L WALNUT AVE.*	*	BALTIMORE COUNTY
(12026-28 PARK HEIGHTS AVE.)	*	
4TH ELECTION DISTRICT	*	CASE NO. 97-303-SPH
3RD COUNCILMANIC DISTRICT	*	
* * * *	*	* * * *

O P I N I O N

This case comes to the Baltimore County Board of Appeals from a decision of the Zoning Commissioner dated August 12, 1997 in which the Zoning Commissioner dismissed the Petitioner's request for special hearing. A timely appeal was filed to this Board on September 10, 1997. A public hearing was held on May 6, 1998, with public deliberation occurring immediately thereafter.

The Petitioner, Evan Shifren, represented himself. Michael D. Vogelstein, Esquire, represented the Protestants. The hearing involved argument concerning Protestants' pre-hearing "Motion to Dismiss Appeal" accompanied by a "Memorandum of Law in Support of Motion to Dismiss Appeal." At the hearing, Mr. Vogelstein restated his Motion to Dismiss and offered oral argument in support thereof.

Mr. Shifren, one of the legal owners of Hi-Caliber Towing, Inc., attempted to introduce new evidence which he alleged was new, and which no prior Judicatory had had the opportunity to review and assess any probative weight thereto. In light of his appearance on a "pro se" basis, the Board allowed considerable leeway in Mr. Shifren's efforts to admit such evidence produced by government bodies, but in the final analysis, the Board concluded that the "new evidence" was not new, but was evidence that was available but not presented in a timely fashion as required by law. Additionally, the Board determined that the evidence was available

when the Petitioner was represented by counsel, and counsel at that time was required to take appropriate action within existing time constraints. Factually, the evidence most favorable to the Petitioner was in existence as of December 14, 1994 -- or 5 days after the Board of Appeals rendered its original decision that the subject property had been abandoned for a duration longer than the period specific under Section 104.1 of the Baltimore County Zoning Regulations "...that is a period of one year or more" (prior Case No. V93-442-SPH).

Hi-Caliber Towing, Inc., filed a Petition for Judicial Review of the December 9, 1994 Order of the Board, and also requested a stay as to the imposition of the Board of Appeals' Order. On February 6, 1995, Judge Robert E. Cadigan denied the Petitioner's request for a stay of the Order; and subsequently, on December 28, 1995, Judge John F. Fader II affirmed the Opinion and Order of the Board of Appeals that the subject property had been abandoned, and affirmed the termination of the property as a nonconforming service station.

On August 12, 1997, Zoning Commissioner Lawrence E. Schmidt dismissed the Petitioner's request for Special Hearing for a number of reasons specifically recited in that Order, principally one being that the "order of the Board issued in December 1994 determined that no business activity of any type occurred on the subject site during the mid 1980s. Any nonconforming use was, therefore, forfeited by the lack of activity from 1986 through 1988."

The Board is required by law to apply the principles of res judicata and collateral estoppel to the matter. The cases recited

by counsel for the Protestants are on point, as are the applicable laws of this State as they apply to the undisputed facts and circumstances in this matter.

While the case of Batson v. Shiflett, 325 Md. 684 (1992) involved a different set of factual circumstances, the decision reached by the Maryland Court of Appeals is applicable in the matter before this Board. In Batson the Court of Appeals (1) discussed collateral estoppel and res judicata in general and (2) addressed the application of these issues in an administrative hearing.

Batson referred to the language of the Supreme Court in United States v. Utah Constr. Co., 384 U.S. 394, 422 (1966):

Where an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose....

[I]f a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding. If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding.

There is no doubt the doctrines of res judicata and collateral estoppel apply to the administrative hearings in this case. The Batson court recognized the three prong test enunciated in a federal case and later upheld by the Supreme Court:

Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the district court was actually litigated before the [agency]; and (3) whether

its resolution was necessary to the [agency's] decision.  
Id. 701.

Here, the Board of Appeals' original Order of December 4, 1994 satisfies all three conditions. In the instant case, there is no question that the parties in the litigation were the same parties as in the prior litigation. The claim itself is the same as that presented in the previous litigation before the County Board of Appeals, as well as the subsequent appeal to the Circuit Court of Baltimore County, with final opinions rendered by both bodies, the applicable appeal period having long since expired.

While the claim presented in the instant case relates to a "nonconforming fuel service station and the prior action was for a valid "nonconforming service station," the Board recognizes that the Maryland Court of Appeals, in the case of Kansas City Board of Education v. Billbrough, 309 Md. 487, 525 A.2d, 232 (1987), concluded that the same evidence test improperly narrows the scope of the claims in the preclusion context, and the Court approved a different approach for determining a claim for preclusion purposes as follows:

- 1) When a valid and final judgement rendered in an action extinguishes the Plaintiff's claim pursuant to the rules of merger or bar, the claim extinguished includes all rights of the Plaintiff to remedies against the Defendant with respect to all or any part of the transaction, or series of connected transactions out of which the action arose.
- 2) What factual grouping constitutes a "transaction," what groupings constitute a "series" are to be determined pragmatically, giving weight to such considerations as to whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties expectations or business owners standing or usage.

The only difference in the action at hand is the addition of

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Case No. 97-303-SPH Evan M. Shifren /Hi-Caliber Towing, Inc. 5  
the word "fuel" incorporated in the phrase "nonconforming fuel  
service station." Maryland Courts have long held that such small  
differences in the context of zoning requests do not prevent the  
application of res judicata (Century 1 Condominium Ass'n., Inc., v  
Plaza Condominium Joint Venture, Inc., 64 Md.App. 107, 113-14, 494  
A.2d 713 [1985]).

The Board is required to apply the long-established principles  
of res judicata and collateral estoppel in this matter. The Board  
is obligated by reason of law to grant the Protestants' Motion to  
Dismiss Appeal and will so order.

O R D E R

IT IS THEREFORE this 15th day of May, 1998 by the  
County Board of Appeals of Baltimore County

ORDERED that the Protestants' Motion to Dismiss Appeal be and  
the same is hereby GRANTED; and it is further

ORDERED that the appeal filed in Case No. 97-303-SPH be and is  
hereby DISMISSED.

Any petition for judicial review from this decision must be  
made in accordance with Rule 7-201 through Rule 7-210 of the  
Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

  
Kristine K. Howanski, Chairman

  
Donna M. Felling

  
Charles L. Marks

RECORDED

CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258  
Maryland Toll Free Number (800) 938-5802

09/21/98

Case Number: 03-C-98-005683 AE  
Date Filed: 06/05/98  
Status: Closed/Inactive  
Judge Assigned: To Be Assigned,

In The Matter Of: Evan Shifren, Et Al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	97303SPH

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Entered
PET	001	Shifren, Evan 12026 Park Heights Ave Owings Mills, MD 21117 Attorney, 0007398 Desser, Richard B	BT DO 09/17/98 06/05/98 Removed: 06/08/98
PET	002	Hi Caliber Towing & Auto Ltd 12028 Park Heights Ave Owings Mills, MD 21117	BT DO 09/17/98 06/05/98
ITP	001	Zoning Board	BT DO 09/17/98 06/05/98

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/05/98	

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF EVAN M. SHIFREN  
(HI-CALIBER TOWING & AUTO LTD)  
12026 Park Heights Avenue  
Owings Mills, MD 21117

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

\*  
\*  
\*  
\*  
\* CIVIL  
ACTION  
\* No. 3-C-98-05683  
\*  
\*

IN THE CASE OF: IN THE MATTER  
EVAN M. SHIFREN /HI-CALIBER TOWING, INC.  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE W/S PARK HEIGHTS AVENUE,  
1650' +/- S OF C/L WALNUT AVENUE  
(12026-28 PARK HEIGHTS AVENUE)  
4TH ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT  
(Case No. 97-303-SPH)

\* \* \* \* \*

PROCEEDINGS BEFORE THE ZONING COMMISSIONER  
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Kristine K. Howanski, Donna M. Felling, and Charles L. Marks, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND  
DEPARTMENT OF PERMITS AND DEVELOPMENT  
MANAGEMENT OF BALTIMORE COUNTY

No. 97-303-SPH

RECEIVED AND FILED

January 21, 1997

98 SEP 17 AM 10:43

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

Petition for Special Hearing filed by Julius W. Lichter, Esquire, on behalf of Hi-Caliber Towing, Inc. and Evan M. Shifren; 1) the

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1/21/97 (cont)	existence of a va nonconforming fuel service station with accessory vehicle repairs, where the property has been continuously used or intended to be used for the retail sales of automotive fuel; 2) to determine whether the nonconforming fuel service station and accessory automobile repair uses have been abandoned; and, 3) to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the property.
February 6, 1997	Publication in newspaper.
February 7	Certificate of Posting.
February 24	ZAC Comments.
March 3	Entry of Appearance filed by People's Counsel for Baltimore County.
May 22	Hearing held by the Zoning Commissioner; counsel for Protestants raised a preliminary Motion, seeking a dismissal of Petition upon the grounds of res judicata; hearing continued; counsel to submit memoranda on issue by 7/11/97.
July 11	Memorandum of Law in Support of Motion to Dismiss Petition for Special Hearing filed by Michael D. Vogelstein, Esquire on behalf of the Protestants.  Pre-Trial Memorandum filed by Julius W. Lichter and Levin & Gann, P.A., on behalf of Evan and Cindy Shifren and Hi-Caliber Towing Services, Inc.
July 17	Request to "...set the record straight with regard to material misrepresentations contained within the pleadings filed by the Protestants...", filed by Julius W. Lichter, Esquire, on behalf of the Shifrens.
July 25	Protestant's Motion to Strike Amendment filed by Michael D. Vogelstein, Counsel for Protestants.
August 12	Order of the Zoning Commissioner in which Petition for Special Hearing is DISMISSED.
September 10	Notice of Appeal filed by Evan Shifren.
November 4	Entry of Appearance filed by Michael D. Vogelstein, as counsel for the Protestants.
January 7, 1998	Letter from Julius W. Lichter, Esquire, informing that neither he nor the law firm of Levin & Gann, P.A. represents Mr. Shifren;

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requested removal of his name as counsel for the appellant.

April 21, 1998

Protestant's Motion to Dismiss Appeal, Memorandum of Law in Support of Motion to Dismiss Appeal filed by Michael D. Vogelstein, Esquire, on behalf of Protestant's.

May 6

Hearing held by the Board of Appeals; deliberation conducted by the Board at the conclusion of hearing.

MAY 15  
~~June 18~~

Opinion and Order issued by the Board; Protestants' Motion to Dismiss Petition is DENIED; (motion presented orally at hearing); Petition for Variance is DENIED.

July 2

Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael L. Freilich, Esquire, on behalf of Alvin R. and Marva C. Graham.

July 21

Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

July 23

Certificate of Notice sent to interested parties.

No additional testimony or evidence; argument on Motion to Dismiss only

September 17

Record of Proceedings filed in the Circuit Court for Baltimore County. Note: said Record does not include the transcript of the proceedings before the County Board of Appeals; transcript was not requested by Petitioner; and therefore not submitted for timely filing with balance of record.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court.

Respectfully submitted,

*Charlotte E. Radcliffe*

Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals of Baltimore  
County, Room 49, Basement - Old Courthouse  
400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

cc: Evan M. Shifren  
Michael D. Vogelstein, Esquire  
People's Counsel for Baltimore County  
Virginia W. Barnhart, County Attorney

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7-13-98  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF EVAN M. SHIFREN  
(HI-CALIBER TOWING & AUTO LTD)  
12026 Park Heights Avenue  
Owings Mills, MD 21117

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

\* CIVIL  
ACTION  
\* No. 3-C-98-05683

IN THE CASE OF: IN THE MATTER  
EVAN M. SHIFREN /HI-CALIBER TOWING, INC.  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE W/S PARK HEIGHTS AVENUE,  
1650' +/- S OF C/L WALNUT AVENUE  
(12026-28 PARK HEIGHTS AVENUE)  
4TH ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT  
(Case No. 97-303-SPH)

\* \* \* \* \*

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Kristine K. Howanski, Donna M. Felling, and Charles L. Marks, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Evan M. Shifren, 12026 Park Heights Avenue, Owings Mills, MD 21117, Petitioner; Michael D. Vogelstein, Esquire, 201 N. Charles Street, Suite 801, Baltimore, MD 21201, Counsel for Protestants; Alexandra McMahan, Valleys Planning Council, 212 Washington Avenue, Towson, MD 21204, Pat and Carl L. Nathanson, 12119 Park Heights Avenue, Owings Mills, MD 21117; Nancy R. and James F. Seal, Jr., 11958 Park Heights Avenue, Owings Mills, MD 21117; Dick and Gayle Newman, 7 Carolyn Court, Owings Mills, MD 21117; Loretta and Eugene Reynolds, 11962 Park Heights Avenue, Owings Mills, MD 21117; Marilyn and David Larach,

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98 JUL 23

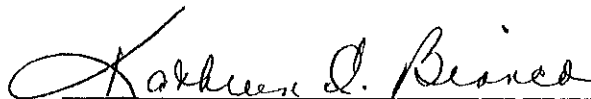
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3005 Susanne Court, Owings Mills, MD 21117; and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204.



Kathleen C. Bianco, Administrator  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Evan M. Shifren, 12026 Park Heights Avenue, Owings Mills, MD 21117, Petitioner; Michael D. Vogelstein, Esquire, 201 N. Charles Street, Suite 801, Baltimore, MD 21201, Counsel for Protestants; Alexandra McMahan, Valleys Planning Council, 212 Washington Avenue, Towson, MD 21204, Pat and Carl L. Nathanson, 12119 Park Heights Avenue, Owings Mills, MD 21117; Nancy R. and James F. Seal, Jr., 11958 Park Heights Avenue, Owings Mills, MD 21117; Dick and Gayle Newman, 7 Carolyn Court, Owings Mills, MD 21117; Loretta and Eugene Reynolds, 11962 Park Heights Avenue, Owings Mills, MD 21117; and Marilyn and David Larach, 3005 Susanne Court, Owings Mills, MD 2117; and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, this 23rd day of July, 1998.



Kathleen C. Bianco, Administrator  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
410-887-3180

July 23, 1998

Mr. Evan M. Shifren  
12026 Park Heights Avenue  
Owings Mills, MD 21117

RE: Civil Action No. 3-C-98-05683  
Evan Shifren -Petitioner (Hi-Caliber Towing)

Dear Mr. Shifren:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

A handwritten signature in cursive script, reading "Kathleen C. Bianco".

Kathleen C. Bianco  
Administrator

Enclosure

*file copy*  
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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
410-887-3180

July 23, 1998

Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, MD 21201

RE: Civil Action No. 3-C-98-05683  
Evan Shifren -Petitioner (Hi-Caliber Towing)

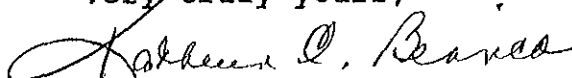
Dear Mr. Vogelstein:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on July 2, 1998, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-98-05683.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

  
Kathleen C. Bianco  
Administrator

Enclosure

c: Alexandra McMahan  
Pat and Carl L. Nathanson  
Nancy R. and James F. Seal, Jr.  
Dick and Gayle Newman  
Loretta and Eugene Reynolds  
Marilyn and David Larach  
People's Counsel for Baltimore County  
Lawrence E. Schmidt /ZC  
Pat Keller /Planning  
Arnold Jablon, Director /PDM  
Virginia W. Barnhart, Co. Atty

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
410-887-3180

May 15, 1998

Mr. Evan M. Shifren  
12026-28 Park Heights Avenue  
Owings Mills, MD 21117

RE: Case No. 97-303-SPH  
Evan M. Shifren /Hi-Caliber Towing, Inc.

Dear Mr. Shifren:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

*Charlotte E. Redcliffe for*

Kathleen C. Bianco  
Administrator

encl.

cc: Michael D. Vogelstein, Esquire  
Alexandra McMahan  
Pat and Carl L. Nathanson  
Nancy R. and James F. Seal, Jr.  
Dick and Gayle Newman  
Loretta and Eugene Reynolds  
Marilyn and David Larach  
People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Arnold Jablon, Director/PDM  
Virginia W. Barnhart, County Attorney

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9 20-98  
PETITION FOR SPECIAL HEARING  
W/S Park Heights Ave., 1650' +/-  
S of c/l Walnut Avenue  
12026-28 Park Heights Avenue  
4<sup>th</sup> Election District  
3<sup>rd</sup> Councilmanic District  
Legal Owner: Evan M. Shifren  
Lessee: Hi-Caliber Towing, Inc.  
Petitioners

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\* CASE NO.: 97-303-SPH

\* \* \* \* \*

**ORDER**

The Court, having read and considered the Motion to Dismiss Appeal, and good cause appearing, it is this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by the County Board of Appeals for Baltimore County;

**HEREBY ORDERED** that the Motion to Dismiss the Appeal be and the same is hereby **GRANTED.**

\_\_\_\_\_  
**Commissioner**

\_\_\_\_\_  
**Commissioner**

\_\_\_\_\_  
**Commissioner**

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PETITION FOR SPECIAL HEARING  
W/S Park Heights Ave., 1650' +/-  
S of c/I Walnut Avenue  
12026-28 Park Heights Avenue  
4<sup>th</sup> Election District  
3<sup>rd</sup> Councilmanic District  
Legal Owner: Evan M. Shifren  
Lessee: Hi-Caliber Towing, Inc.  
Petitioners

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\* CASE NO.: 97-303-SPH

98 APR 21 PM 2:01  
COUNTY CLERK

\* \* \* \* \*

**MOTION TO DISMISS APPEAL**

Now comes the Protestants, by Michael D. Vogelstein, their attorney, pursuant to Section 501.7 of the Baltimore County Zoning Regulations respectfully moves this Honorable Board of Appeals to dismiss the Appeal filed by Hi-Caliber Towing, Inc. and Evan N. Shifren and in support thereof states the following:

1. On August 12, 1997, the Honorable Lawrence E. Schmidt, Zoning Commissioner for Baltimore County "Ordered the Petition for Special Hearing be and is hereby Dismissed," pursuant to Protestants' preliminary Motion to Dismiss upon the grounds of RES JUDICATA. Commissioner Schmidt's Findings of Fact and Conclusion of law is attached hereto marked Exhibit Number 4. The Petitioner thereafter filed the instant Appeal.

2. Previously, Hi-Caliber Towing Inc., by and through its owner Evan N. Shifren filed a Petition for Special Hearing before this Honorable Commission requesting a Special Hearing to:

- a) approve a valid nonconforming fuel service station with accessory vehicle repairs;
- b.) to determine whether the fuel service station and uses have been abandoned;
- c) to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities pursuant to Section 405.7 E.

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3. The issues contained within the Petition for Special Hearing were previously litigated before this Honorable Commission, before the County Board of Appeals, as well as the Circuit Court for Baltimore County on appeal .

4. Hi-Caliber Towing, Inc. through its owner, Evan N. Shifren previously petitioned this Honorable Commission for a Special Hearing for the use of a nonconforming service station and whether an abandonment of an automotive service station was found to exist.

5. On December 9, 1994, the County Board of Appeals of Baltimore County, in case number V93-442-SPH rendered its unanimous decision stating on page four of the opinion " The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 any abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated," a copy of which is attached hereto, marked Exhibit Number (1) one.

6. In accordance, therewith, the County Board of Appeals of Baltimore County "Ordered that the Petition for Special Hearing for the use of a nonconforming service station be and is hereby Denied; and it is further Ordered that such use shall be terminated no later than (30) days from the date of this Order."

7. Hi-Caliber Towing, Inc. filed its Petition for Judicial Review of the decision of the County Board of Appeals of Baltimore County to the Circuit Court for Baltimore County and, additionally, moved to stay the imposition of the County Board of Appeals order to terminate its use.

8. On February 6, 1995 the Honorable Robert E. Cadigan denied the Petitioner's

Motion to Stay the Imposition of the Order to terminate Hi-Caliber Towing, Inc's use of the abandoned property located at 12026-28 Park Heights Avenue, a copy of which is attached hereto, marked Exhibit Number (2) two.

9. On December 28, 1995, the Honorable John F. Fader II affirmed the opinion of the Board of Appeals that the subject property had been abandoned and affirmed the termination of the property as a nonconforming service station to Hi-Caliber Towing, Inc, a copy of which is attached hereto marked Exhibit number three (3).

10. This is the Fourth (4<sup>th</sup>) Order by a Court of competent jurisdiction terminating the use of the property as a nonconforming service station to Hi-Caliber Towing, of which Hi-Caliber Towing has paid absolutely no heed and continues to abuse the Appellate process by filing frivolous and previously litigated issues.

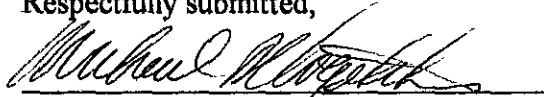
11. This matter is barred upon the doctrine of res judicata, as the parties in the present litigation are identical to the parties in the prior litigation; the claim presented in the present petition is identical to the claim presented in the prior litigation before the County Board of Appeals, as well as to the Circuit Court for Baltimore County and, again before Commissioner Schmidt. A final judgment on the merits was rendered not only by the County Board of Appeals, and in addition thereto, by Judge Fader in the Circuit Court of Baltimore County.

12. The three requirements to support dismissal upon a claim for res judicata are directly on point in this matter and, in accordance with the applicable case law, requires this matter to be dismissed as the Petition for Special Hearing is precluded from subsequent litigation, all of which more fully appears in the attached Memorandum of Law in support of this Motion to Dismiss.

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**WHEREFORE**, the Protestants respectfully move this Honorable Commission to Dismiss the Appeal of the Dismissal of the Petition for Special Hearing.

Respectfully submitted,

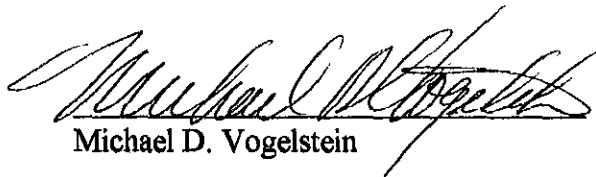


**Michael D. Vogelstein**  
**201 N. Charles Street**  
**Suite 801**  
**Baltimore, Maryland 21201**  
**(410) 727-3000**

**Attorney for the Protestants**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 22<sup>nd</sup> day of April, 1998  
that a copy of the foregoing Motion to Dismiss Appeal was mailed, postage pre-paid to: Evan N.  
Shefren, 12026 Park Heights Avenue, Baltimore, Maryland 21117. Petitioner.



**Michael D. Vogelstein**

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PETITION FOR SPECIAL HEARING	*	BEFORE THE
W/S Park Heights Ave., 1650' +/-		
S of c/l Walnut Avenue	*	COUNTY BOARD OF APPEALS
12026-28 Park Heights Avenue		
4 <sup>th</sup> Election District	*	FOR
3 <sup>rd</sup> Councilmanic District		
Legal Owner: Evan M. Shifren	*	BALTIMORE COUNTY
Lessee: Hi-Caliber Towing, Inc.		
Petitioners	*	CASE NO.: 97-303-SPH

\* \* \* \* \*

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS APPEAL**

Now comes the Protestants by Michael D. Vogeistein, their attorney, in support of their Motion to Dismiss files this Memorandum of Law and in support thereof states the following:

**UNDISPUTED FACTS**

The parties in this matter consist of Evan N. Shifren, owner of HI-Caliber Towing Inc., located at 12026-28 Park Heights Avenue, in Owings Mills, Maryland. The Protestants, herein include neighbors contiguous to the subject property, as well as neighborhood associations in the surrounding area. The identical parties have been involved in litigation concerning the subject property for a number of years.

On November 15, 1994, the County Board of Appeals under Case Number V-9342-SPH heard the identical parties on Appeal from an adverse decision of the Deputy Zoning Commissioner concerning a Petition for Special Hearing to determine whether an abandonment of the automotive service station was found to exist. The owner, Evan N. Shifren, of HI-Caliber Towing, Inc., among others testified on behalf of the Petitioner during that hearing, several of the Protestants that are present in this matter testified before the County Board of Appeals on November 15, 1994. On December 9, 1994, the Board on page four (4) of its opinion stated "The

preponderance of the testimony indicates the subject property had in fact been abandoned and in accordance with the effective regulations (Section 104.1...) A nonconforming use at this property has been terminated." The County Board of Appeals unanimously Ordered that the Petition for Special Hearing for the use of a nonconforming service station be and is hereby denied and firther Ordered that such use shall be terminated no longer than thirty (30) days from this Order. A copy of the County Board of Appeals Opinion is attached hereto, marked Exhibit number (1) one.

A timely Petition for Judicial Review of the County Board of Appeals Order terminating the use of the property was filed in the Circuit Court for Baltimore County. A Motion to Stay the imposition of the Order was filed and Denied by the Honorable Robert E. Cadigan, on February 6, 1995. A copy of said Order is attached hereto marked Exhibit Number (2) two.

On December 28, 1995, the Honorable John F .Fader II issued his Memorandum Opinion and Judgment affirming the Board of Appeals decision denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026-28 Park Heights Avenue. Although the Circuit Court for Baltimore County on two prior occasions as well as the County Board of Appeals terminated the use of a nonconforming service station to HI-Caliber Towing, Mr. and Mrs Shifren continue to use the property in violation of the previous Court's Order, as stated by Counsel for the Petitioners before this Honorable Commission on May 22, 1997.

A Petition for Special Hearing was filed with the Zoning Commissioner of Baltimore County by Hi-Caliber Towing, Inc., Lessee and Evan N. Shifren-owner on or about January 21, 1997 requesting a Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the Administrative procedures to require the

cessation of business activities pursuant to Section 405.7 E. A copy of the Petition for Special Hearing was properly forwarded to the identical parties in the prior action before the Commission, i.e. the Protestants herein. The Petition of Hi-Caliber Towing, Inc. requesting a nonconforming fuel service station is identical to the Petition for Special Hearing filed before the Commission and Denied on December 9, 1994 by the Commission and Affirmed on December 28, 1995 by Judge Fader and was a Final Judgment on the merits.

The present Appeal of the Dismissal of the Petition for Special Hearing is before this Honorable Board of Appeals for a second time. On May 22, 1997 this Honorable Commission requested Counsel to file a Memoranda of Law concerning the issue of res judicata and collateral estoppel and whether this Administrative Agency is entitled to full preclusive effect. On August 12, 1997, the Honorable Commissioner Lawrence E. Schmidt granted the Protestants' Motion to Dismiss from which decision, this Appeal was filed.

#### RES JUDICATA

A case on point with the instant matter is Esslinger vs. Baltimore City, 95 Md. App. 607 (1993) 622 A.2d 774, wherein the homeowner Donald F. Esslinger filed a complaint alleging the denial of his civil rights from the refusal of the Board of Municipal Zoning Appeals to allow him to erect and maintain a satellite dish. The Circuit Court for Baltimore City granted the city's motion to dismiss the entire action as barred by res judicata and collateral estoppel and the homeowner Appealed. The court stated " Under Maryland law the requirements of res judicata or claim preclusion are: 1) that the parties in the present litigation are the same or in privity with the

parties to the earlier dispute, 2) that the claim presented in the current action is identical to the one determined in the prior adjudication and 3) that there was a valid final judgment on the merits."

Cassidy vs. Board of Education, 316 Md. 50, 57, 557 A.2d 227(1989).

"If all three elements are present then the final judgement in the first claim bars the entire subsequent claim." It cannot be disputed that the first, second, and third elements of the present action &e identical to the prior action. Hi-Caliber Towing is the same Petitioner and the Protestants are the same parties in the earlier dispute. The claim presented in the current action is one for a nonconforming fuel service station. The claim in the prior action was for a valid nonconforming service station. Finally there was a final judgement in the Zoning case in the prior action which was affirmed by the Circuit Court of Baltimore County on the merits as to whether the nonconforming service station was abandoned.

Hi-Caliber Towing, Inc. may argue that the second element required for the claim preclusion, i.e. that the claim presented in the current action is not identical to the one determined in the prior action basing its argument upon the additional word fuel in valid nonconforming fuel service station changes the claim presented to this Commission.

The Court of Appeals in the case of Kansas City Board of Education vs. Billbrough, 309 Md.487, 525 A.2d, 232 (1987) concluded that the same evidence test improperly narrows the scope of the claim in the preclusion context. The court approved a different approach for determining a claim for preclusion purposes as follows:

1) when a valid and final judgment rendered in an action extinguishes the Plaintiff's claim pursuant to the rules of merger or bar, the claim extinguished includes all rights of the Plaintiff to



remedies against the Defendant with respect to all or any part of the transaction, or series of connected transactions out of which the action arose.

2) what factual grouping constitutes a "transaction", what groupings constitute a "series" are to be determined pragmatically, giving weight to such considerations as to whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties expectations or business owners standing or usage." The Restatement Second of Judgments 1982 Section 24. Under the above "transaction" approach it is clear that the claim in a prior zoning case is identical to the present claim and it cannot be disputed that both arose from precisely the same use of a nonconforming service station. The facts of the two actions are thus related in space, origin and motivation. Both involved Hi-Caliber's request for and the Zoning Board's denial for the use of a nonconforming service station. The only difference in the present action is the addition of the word fuel to be incorporated in the phrase "nonconforming fuel service station." Maryland Courts have long recognized that such small differences in the postures of the zoning requests do not prevent application of res judicata. See Century 1 Condominium Ass'n Inc. vs. Plaza Condominium Joint Venture, Inc. 64 Md. App 107, 113-14, 494 A.2d 713 (1985). Accordingly, the claim presented in this action is identical to that determined in the prior adjudication "all three res judicata elements are present. When this is so a Plaintiff may not litigate a claim for relief by switching legal theories." Bilbrough, 309 Md. at 500, 525 A.2d 232.

Counsel for HI-Caliber, Towing, Inc. has suggested, pursuant to section 500.7 of the Baltimore County Zoning regulation that this Honorable Commission is not required to follow prior orders of courts of competent jurisdiction rendering judgment upon the merits basing its

argument that the Zoning Commissioner has discretion to pass such orders as he may deem necessary for the proper enforcement of all Zoning regulations. This argument is totally without merit and is not supported by the applicable case law. This original action was a Zoning Board decision, affirmed in an on the record appeal by the Circuit Court for Baltimore County. "It is crystal clear that a final judgement of a Circuit Court affirming a decision of an Administrative Agency is entitled to full preclusive effect." Esslinger, Supra App 622 A.2d 781. Thus, the initial action here is conclusive" not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit. Roland vs. Harris 320 Md. 223, App 229, 577 A.2d 51(1990).

Not only is the Hi-Caliber Towing, Inc's. Petition for Special Hearing barred from further litigation on the basis of res judicata, it is also collaterally estoppel from litigating issues decided in prior litigation. The elements of collateral estoppel are:

1) the issues raised in the prior action are identical with the issue presented in the action in question; 2) there is a prior judgment on the merit; 3) the party against whom estoppel is asserted was a party to the prior litigation. Batts vs. Lee, 949(F.Supp) 1229 (D.Md. 1996), Aiston vs. Robinson 791 (F.Supp) 569 D. Md. 1992). All three elements of collateral estoppel are also met in Hi-Caliber's current Petition which, again, bars the claim from further litigation.

**APPEAL OF THE DISMISSAL OF THE**  
**PETITION FOR SPECIAL HEARING SHOULD BE DISMISSED**

A. The first issue, raised in Hi-Caliber Towing Co, Inc current Petition for Special Hearing for the property located at 12026 Park Heights Avenue, addresses the existence of a valid nonconforming fuel service station with accessory vehicle repairs pursuant to Baltimore County

Zoning Regulations, Sections 101 and 104 where the subject property has been continuously used or intended to be used for the retail sale of automotive fuel.

Section 101 defines a fuel service station as:

A structure or land used or intended to be used for the retail sale of automotive fuel, but not a truck stop. For the purpose of these regulations, any establishment which sells auto fuel retail shall be considered a fuel service station, unless it is classified as a truck stop or trucking facility.

The Board of Appeals for Baltimore County held that the property at 12026 Park Heights Avenue was abandoned during the period between 1985 and 1988. The Circuit Court for Baltimore County affirmed the decision of the Board of Appeals that there was an abandonment because Hi-Caliber Towing had not shown a continuing nonconforming use of the property at 12026 Park Heights Avenue.

Section 104.1 states that a:

A nonconforming use (as defined in section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

Subsection one of the Petition for Special Hearing for the property located at 12026 Park Heights Avenue is barred from any further litigation because the issue, as to the abandonment of the property at 12026 Park Heights Avenue has been decided by the Baltimore County Board of Appeals and affirmed by the Circuit Court for Baltimore County. A final judgment of a Circuit Court affirming decision is entitled to full preclusive effect.

Esslinger v. Baltimore City, 622 A.2d 774,789(Md. App. 1993). Thus, the determination of the abandonment of the property at 12026 Park Heights Avenue by the Circuit Court for Baltimore County is conclusive "not only to all matters that have been decided in the original suit, but as to

all matters with propriety could have been litigated in the first suit. Rowland v. Harrison, 577 A.2d 51(1990). The determination of the fuel service station has been decided by the Circuit Court and is barred from any future litigation on grounds of res judicata and collateral estoppel.

**B.** The second issue contained in the Petition for Special Hearing is to determine whether the nonconforming fuel service station and accessory automobile repair uses have been abandoned pursuant to Baltimore County Zoning Regulations Sections 101 and 405.7 respectively. Section 405.7 specifically addresses abandoned fuel service stations. Under Section 405.7A the county council has recognized that an abandoned fuel service station can become a threat of the health, safety and welfare of the community, can have a decaying impact on surrounding properties and cause a deterioration of the use, value, and enjoyment of property in the neighborhood. The Circuit Court for Baltimore County affirmed the Zoning Board's determination that the property at 12026 Park Heights Avenue had been abandoned between 1985 and 1988. Witnesses testified that the property had become deteriorated, overgrown with weeds, the windows were busted out and the building was barely visible from the street. Furthermore, there was no electricity or running water on the property. Based upon the derelict status of the property at 12026 Park Heights Avenue the Board of Appeals ordered the property had been abandoned. The issue as to the status of the property at 12026 Park Heights Avenue is barred from any further litigation on grounds of collateral estoppel and res judicata.

**C.** The third issue addressed by Hi-Caliber Towing Inc.'s current Petition for Special Hearing for the property located at 12026 Park Heights Avenue attempts to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the subject property pursuant to Baltimore County Zoning Regulations Section 405.7.

Section 405.7 E. Proceedings to require removal states;

1. Whenever it shall be determined by the director of zoning administration And development management that a fuel service station has not been in continuous operation and that the premises have not been continuously maintained, the director shall issue a notice to the owner or agent to repair, correct, or take other appropriate action to remedy the specific deficiencies enumerated in the notice.
2. If the deficiencies have not been corrected within a period of 90 days following the date of the notice, the director of zoning administration and development management shall refer the matter to the zoning commissioner for a hearing, pursuant to Section 500.7, to require removal.
3. If, after notice and hearing pursuant to Section 500.7 of the zoning regulations, it is determined that a fuel service station has not been in continuous operation and not continuously maintained and corrected according to prior notice, and if it is further found that by reason of the continued vacancy, the structure and grounds lack reasonable or adequate maintenance, thereby causing deterioration and blighting influence on nearby properties and thereby depreciating the enjoyment, use or value of the property in the immediate vicinity to such an extent that it is harmful to the public health, welfare, safety, comfort or convenience of the neighborhood in which the station is situated, the zoning commissioner shall order the station's removal. For the purpose of the subsection, removal shall mean the removal by the owner of all above ground structures, including paving, and removal or abandonment in place of underground tanks in compliance with the provisions of COMAR 26.10.10.02 and section 14-300(1)) of the Baltimore County Code.

Section 500.7 allows for the Zoning Commissioner in his or her discretion to conduct hearings and pass orders subject to the right of appeal to the County Board of Appeals. On December 9<sup>TH</sup> 1994, the County Board of Appeals for Baltimore County Ordered pursuant to Section 501.7 that the Petition for Special Hearing for the use of a nonconforming service station for the property located at 12026 Park Heights Avenue be denied. The Circuit Court for Baltimore County affirmed the County Board's decision denying the use of a nonconforming service station to Hi-Caliber Towing. The question, as to the status of the property at 12026 Park

Heights Avenue has previously been litigated. Thus, the claim of Hi-Caliber Towing Co., Inc. is barred from further litigation.

Counsel for the Petitioner argued that res judicata should not apply. In this regard, reference was made to Section 500.7 of the BCZR which empowers the Zoning Commissioner with wide discretion and authority, to conduct hearings and issue Orders as he may see fit. Although this section does, indeed, confer wide discretion and authority, it does not permit the Zoning Commissioner to ignore the law, including the doctrine of res judicata. On this point, the case Fertitta v. Brown, 252 Md. 594 (1968) is controlling.

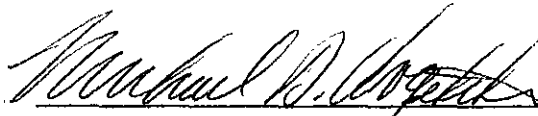
Moreover, the allegation that the Board's prior decision, as affirmed by Judge Fader, was wrong is no consequence. As stated in DeMaio v. Lumbermen's Mutual Casualty Co., 247 Md. 30 (1967), it is well established that even if a prior judgment is wrong, if same was final, between the same parties and for the same cause of action, res judicata applies.

### CONCLUSION

Under Maryland law the basic rules of res judicata fully apply to affirmances of administrative decisions. Bethesda Ford, Inc v. Ford Motor Co., 572 F. Supp.623. The current Petition for Special Hearing by Hi-Caliber Towing must be dismissed because it is barred on grounds of res judicata. Furthermore, the Circuit Court of Baltimore County has affirmed the decision of the County Board of Appeals In Maryland the final judgment of a circuit court affirming the decision of an administrative agency is entitled to full preclusive effect. Esslinger, 622 A.2d 774.

For the reasons stated above, Hi-Caliber Towing, Inc.'s Appeal of the Dismissal of the Petition for Special Hearing should be dismissed.

Respectfully submitted,




**Michael D. Vogelstein**  
201 North Charles Street  
Suite 801  
Baltimore, Maryland 21201  
(410) 727-3000

**Attorney for Protestants**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 20th day of April, 1998  
that a copy of the foregoing Memorandum of Law In Support of Motion to Dismiss Appeal was  
mailed, postage pre-paid to: Evan N. Shefren, 12026 Park Heights Avenue, Baltimore, Maryland  
21117. Petitioner.

  
Michael D. Vogelstein

IN THE MATTER OF:  
PETITION FOR SPECIAL HEARING  
ON PROPERTY LOCATED AT  
12026 PARK HEIGHTS AVENUE  
4TH ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT

N.B.S., INC. AND HI-CALIBER  
TOWING, INC. /OWNER /OPERATOR

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. V93-442-SPH

\* \* \* \* \*

O P I N I O N

This case comes before the Board on appeal from a decision of the Deputy Zoning Commissioner in which a Petition for Special Hearing was granted, based on the determination that no abandonment of an automotive service station was found to exist. The case was heard this day, Thursday, November 3, 1994, in its entirety, and public deliberation was held on Tuesday, November 15, 1994 at 9:30 a.m.

Counsel for the Protestants in this matter asserted that the towing business of the owner/operator, Hi-Caliber Towing, Inc., is not in compliance with the zoning classification of the subject site at 12026 Park Heights Avenue. Although the property had a nonconforming use as a service station for many years, Hi-Caliber's use is now argued to be in violation of Section 104.1 of the Baltimore County Zoning Regulations (BCZR).

The regulation reads as follows:

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

In this de novo hearing, the Owner/Operator had the burden of



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producing testimony and evidence to show that nonconforming use of the subject property has been continuous. Purchased in 1992 by the owners, Evan and Cindy Shifren, testimony was offered by several witnesses who said that the service was never discontinued, particularly for as long as a year and one day. The matter of the discontinued nonconforming use covers the time period of 1985-1988.

Charles Runkles, Vice President of N.B.S., the commercial realtor that purchased the site in 1988, testified to his familiarity with the service station for 13 years as a customer and nearby resident. However, for the time span in question, Mr. Runkles was not certain of the station's operations, but always saw activity on the site as a viable business.

Ms. Bonnie Haines, apartment resident at 1253 Park Heights Avenue, testified that she was a weekly customer of the service station during the period of 1985 to 1988. In her testimony, Ms. Haines acknowledged that her husband performed various jobs for the Petitioner and was a family friend of the Shifrens.

Mr. Harvey Shifren, father of the operator and a long-time property owner in the area, testified that the property had always been in continuous use since 1976 as an Amoco or Texaco station. He remembered his son towing vehicles for the station.

Cindy and Evan Shifren testified to their purchase of the site in September 1992 after 18 years with a towing service from other locations.

Testifying for the Protestants were two previous operators of

the service station at the site, Mr. James Hammersla and Mr. Ronald Goodman. Mr. Hammersla reviewed his operations at the site which terminated in August 1985, because of County restrictions on the operation, and his eventual bankruptcy. Since that time, he recounted passing the station regularly for the next several years and saw no gasoline business, no maintenance, and a vacated site.

Mr. Goodman leased the site in September 1988 and obtained a trader's license. Up for auction, he had inspected the station and found the property overgrown in weeds and debris, no hoses on the pumps, and broken windows. Mr. Goodman testified that the electric meters had been removed. He had the pumps repaired and re-established the business in September 1988 for the next 15 months. He had been told by the County that the use was okay. In obtaining a license, the "year and a day" regulation of Section 104.1 was not considered at the time.

Several subpoenaed witnesses, not appearing at the initial hearing before the Deputy Zoning Commissioner, testified as protestants in this case. Mary Fitchett, a resident immediately across the road from the site, testified of her father's original ownership and incidents that led to restrictions imposed on the service station in 1985. Ms. Fitchett testified that the station was abandoned and became a derelict property from Mr. Hammersla's closing in 1985 to Mr. Goodman's opening of the station in 1988.

Carl Nathanson, 1219 Park Heights Avenue, a resident one block from the site since 1985, recalled the location as abandoned,

overgrown, strewn with wrecked cars, engine blocks and tires, and a property that should be condemned. Mr. Nathanson saw no operation on the site until Mr. Goodman arrived in 1988. Unfamiliar with zoning laws, he raised no objection to the resumption of business on the site in 1988.

The Board is cognizant of conflicting testimony as to the continuous use of 12026 Park Heights Avenue as a service station from the time it ceased operations by Mr. Hammersla in 1985 until its lease by Mr. Goodman in 1988. Ongoing observations by Mr. Hammersla of the station he had abandoned in 1985 and Mr. Goodman's rehabilitation of the derelict property in 1988 are persuasive to this Board that the operation of the service station as a nonconforming use was discontinued for more than one year. Furthermore, the daily observation of concerned residents living approximate to the location is convincing that the nonconforming use of the site for a service station had been discontinued for some time.

Irrespective of the issue of trader's licenses to operators at the station since 1988, the regulations of Section 104.1 prevail in this matter of the nonconforming use. The Owner/Operator has the burden of producing testimony and evidence showing that nonconforming use of the property has been continuous. The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 -- any

Case No. V93-442-SPH N.B.S., Inc. /Hi-Caliber Towing, Inc.

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abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated.

O R D E R

IT IS THEREFORE this 9th day of December, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing for the use of a nonconforming service station be and is hereby DENIED; and it is further

ORDERED that such use shall be terminated no later than thirty (30) days from the date of this Order.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Harry E. Buchheister, Jr.  
Harry E. Buchheister, Jr.

Robert O. Schuetz  
Robert O. Schuetz

HI-CALIBER TOWING, INC.

Petitioner

v.

PETITION OF SPECIAL HEARING  
ON PROPERTY LOCATED AT:  
12026 PARK HEIGHTS AVENUE

Appellees/Protestants

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY

\* Case No.: 95CV00176  
\* APPEAL FROM COUNTY  
\* BOARD OF APPEALS

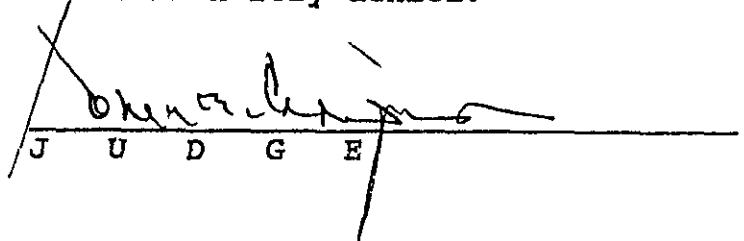
\* Case No.: V93-442-SPH

\* \* \* \* \*

ORDER

The Court, having read and considered the Motion to Stay Imposition of Order, Answer in Opposition thereto and Memorandum of Law, having heard arguments of Counsel and good cause appearing, it is this 6<sup>th</sup> day of February, 1995 by the Circuit Court for Baltimore County:

HEREBY ORDERED, that the Petitioner's Motion to Stay Imposition of Order be and the same is hereby denied.

  
J U D G E

COPIES SENT TO:

Gary S. Mandel, Esquire  
Kathi Weidenhammer, Esquire  
Michael D. Vogelstein, Esquire



MICROFILMED

IN THE MATTER OF	*	IN THE CIRCUIT COURT
N.B.S., INC. AND HI-CALIBER	*	FOR BALTIMORE COUNTY
TOWING, INC./OWNER/OPERATOR	*	CASE NO. V 93-442-SPH
* * * * *		

MEMORANDUM OPINION AND JUDGMENT  
AFFIRMING BOARD OF APPEALS

This court affirms the opinion of The Board of Appeals of Baltimore County denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026 Park Heights Avenue. It is so ORDERED by the Circuit Court for Baltimore County this 28th day of December, 1995.

A.

The parties agree that the real property at 12026 Park Heights Avenue had a nonconforming use as a service station for many years. At issue is whether that nonconforming use was lost due to the fact the nonconforming use had been abandoned or discontinued for a period of one year or more. The law is as follows:

Section 104.1 of the Baltimore County Zoning Regulations (BCZR)

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

There was conflicting evidence before the Board of Appeals as to whether there was abandonment in use of the premises. The Board of Appeals decided, on the basis of this conflicting evidence, the more credible evidence showed that despite the issuance of a trader's

PLAINTIFF'S  
EXHIBIT  
**3**

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license to the operators of the station since 1988, an abandonment had been shown. Thus, the owner/operator had not shown a continuous nonconforming use of the property.

B.

When we had a hearing in this case on 11/30/95, there was discussion as to whether any requirement existed as to who had the burden of proof on appeal to the Board of Appeals from a decision of the Deputy Zoning Commissioner. A review of the BCZR in this court did not show there is any presumption of correctness attendant to the Deputy Zoning Commissioner's decision. Likewise, there was nothing found in those regulations ascribing to one party or the other the burden of proof. Thus, it seems reasonable and consistent with all other areas of Maryland civil law that the burden of proof rested with the petitioner asking for the nonconforming use certification. In the words of the Board in its written decision, that burden was not sustained:

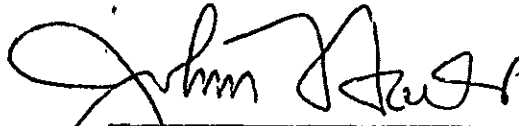
The Owner/Operator has the burden of producing testimony and evidence showing that nonconforming use of the property has been continuous. The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 -- any Case No. V93-442-SPH N.B.S., Inc./Hi-Caliber Towing, Inc. abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated.

It is well understood by both parties here that this court's review of an agency decision is limited, and the court cannot substitute its decision for that of the agency. As important as anything else is the law that holds that the agency is the trier of fact, and judge of the credibility of the witnesses.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

Commissioner v. Cason, 34 Md. App. 487, 508, 368 A.2d 1067

(1977). Accordingly, the opinion of the Board of Appeals is affirmed.

  
John F. Fader II  
Judge

JFF:am

cc: Michael Vogelstein, Esq.  
321 N. Calvert Street  
Baltimore, MD 21201

G. Warren Mix, Esq.  
Turnbull, Mix & Farmer  
706 Washington Avenue  
Towson, Maryland 21204



\* \* \* \* \*

After several postponements, the matter was scheduled for public hearing on May 22, 1997. At that hearing, the Petitioner, Evan M. Shifren, appeared and was represented by counsel, Julius W. Lichter, Esquire. Also appearing at the hearing was Michael Vogelstein, Esquire, on behalf of a number of individuals who reside in the community. The attendance

4

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sign-in sheets circulated on that date disclosed that numerous individuals appeared both in support of, and in opposition to, the Petition.

At the initial hearing, counsel for the Protestants raised a preliminary Motion, seeking a dismissal of the Petition upon the grounds of res judicata. The hearing was continued and counsel were given an opportunity to submit memoranda on this issue by July 11, 1997. Memoranda were in fact received from both counsel on that date. Additionally, Mr. Lichter's memorandum sought an amendment of the Petition. Specifically, the relief described in paragraph 3 of the original Petition was deleted and, in lieu thereof, the Petitioner sought approval, "That the service garage, as a principal use, has not been abandoned or discontinued pursuant to BCZR Sections 101 and 104".

The hearing was reconvened on August 6, 1997. The parties and their counsel again appeared and oral argument was offered by both sides. For reasons set forth on the record, as will be summarized hereafter, the preliminary Motion offered by counsel on behalf of the Protestants was granted and the Petition dismissed.

A review of the case file discloses that the subject property is zoned R.C.5 and has been so zoned since at least the mid 1980s. That zoning classification does not permit, by either right or special exception, a "fuel service station" nor a "service garage". A fuel service station is defined in Section 101 of the BCZR as, "A structure or land used or intended to be used for the retail sale of automotive fuel." A service garage is defined as "A garage, other than a residential garage, where motor driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale."

The first zoning case on this property came before then Zoning Commissioner Arnold Jablon in case No. 85-167. Following a public hearing, Commissioner Jablon granted nonconforming use status on the property as a

fuel service station. His opinion, which is contained within the County records and speaks for itself, states that the property was used as a fuel service station since 1934. The opinion also states that the property was not historically used as a service garage. The relief granted allowed the fuel service station use to continue, with an accessory vehicle repair service as limited in the Order. Essentially, the nonconforming status conferred on the property grandfathered its use as a fuel service station.

The second case involving this property was instituted in 1993. At that time, a Petition for Special Hearing was filed by Baltimore County, seeking a determination as to whether the nonconforming use conferred by Commissioner Jablon in 1985 has been forfeited. Specifically, it was alleged in the Petition that the use of the property for a fuel service station had been discontinued between the years 1986 through 1988. Pursuant to Section 104 of the BCZR, which regulates nonconforming uses, such uses cannot continue if they are abandoned, or discontinued for a period of one year or more.

That Petition (case No. V-93-442-SPH) came before Deputy Commissioner Timothy Kotroco in 1993. By Order of October 18, 1993, Deputy Commissioner Kotroco determined that the use had not been discontinued or abandoned. The matter was timely appealed and the Board of Appeals subsequently conducted its own hearing. By Order of December 9, 1994, the Board issued an opposite opinion, holding that the nonconforming use had been discontinued or abandoned and was, therefore, forfeited. On appeal, Circuit Court Judge John F. Fader II affirmed the decision of the Board on December 28, 1995.

It is the Order of Judge Fader which the Protestants claim bars additional litigation under the theory of res judicata. As both parties cited within their memoranda, that doctrine in a zoning perspective was clearly set out by the Court of Special Appeals in Esslinger v. Baltimore

City, 95 Md. App, 607 (1993). Therein, the Court set forth three tests that need be considered in determining whether res judicata attaches. They are: (1) whether the parties in the present litigation are the same or in privity with the parties in the earlier case; (2) whether there exists a valid final judgment on the merits in the prior case; and (3) whether the claim presented in the current action is identical to the prior action. For reasons fully set forth during my remarks from the bench, I find that res judicata does apply. Clearly, the parties in the present case are the same as in the case which culminated with Judge Fader's Order. Moreover, Judge Fader's Order is obviously a valid final judgment on the merits. Moreover, the claim is the same; to wit, whether the fuel service station nonconforming use conferred by Commissioner Jablon in 1985 was forfeited by the abandonment of the use of the property in that manner.

Counsel for the Petitioner argued that res judicata should not apply. In this regard, reference was made to Section 500.7 of the BCZR which empowers the Zoning Commissioner with wide discretion and authority to conduct hearings and issue Orders as he may see fit. Although this section does, indeed, confer wide discretion and authority, it does not permit the Zoning Commissioner to ignore the law, including the doctrine of res judicata. On this point, the case Fertitta v. Brown, 252 Md. 594 (1968) is controlling.

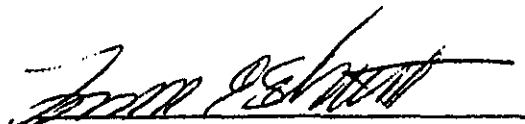
Moreover, the allegation that the Board's prior decision, as affirmed by Judge Fader, was wrong is of no consequence. As stated in DeMaio v. Lumbermen's Mutual Casualty Co., 247 Md. 30 (1967), it is well established that even if a prior judgment is wrong, if same was final, between the same parties and for the same cause of action, res judicata applies. Moreover, it is significant to note that the judgment rendered in the prior case is judicial in nature. That is, although there is case law to

the effect that judgments of administrative boards and bodies may not always trigger res judicata, a judicial judgment, such as the one issued by Judge Fader, clearly does so.

Finally, as to the Petitioner's amendment, same is disposed of by Commissioner Jabon's Order. His Order is unequivocal that the historic use of this property was as a fuel service station and not a service garage. His findings of fact are binding on these parties. Moreover, even if the nonconforming service garage could be established, which would be in direct contradiction to Commissioner Jablon's prior findings, it appears that the Order issued by the Board was conclusive that no business activity of any type occurred on the site during the mid 1980s. Any nonconforming use was, therefore, forfeited by the lack of activity from 1986 through 1988. Therefore, for the reasons set forth hereinabove and as stated in open hearing, the Motion to Dismiss the Petition for Special Hearing must be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 12<sup>th</sup> day of August 1997, that the Petition for Special Hearing be and is hereby DISMISSED.

Any appeal from this decision must be taken in accordance with the applicable provisions of law.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn

PETITION FOR SPECIAL HEARING  
W/S Park Heights Ave., 1650' +/-  
S of c/l Walnut Avenue  
12026-28 Park Heights Avenue  
4<sup>th</sup> Election District  
3<sup>rd</sup> Councilmanic District  
Legal Owner: Evan M. Shifren  
Lessee: Hi-Caliber Towing, Inc.  
Petitioners

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\* CASE NO.: 97-303-SPH

\* \* \* \* \*

**ORDER**

The Court, having read and considered the Motion to Dismiss Appeal, and good cause appearing, it is this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by the County Board of Appeals for Baltimore County;

**HEREBY ORDERED** that the Motion to Dismiss the Appeal be and the same is hereby **GRANTED.**

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

PETITION FOR SPECIAL HEARING  
W/S Park Heights Ave., 1650' +/-  
S of c/l Walnut Avenue  
12026-28 Park Heights Avenue  
4<sup>th</sup> Election District  
3<sup>rd</sup> Councilmanic District  
Legal Owner: Evan M. Shifren  
Lessee: Hi-Caliber Towing, Inc.  
Petitioners

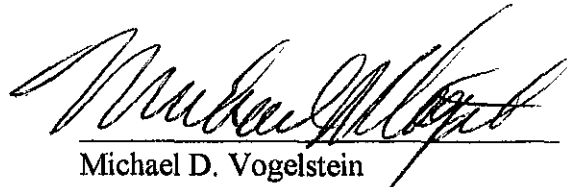
\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\* CASE NO.: 97-303-SPH  
\*

\* \* \* \* \*

**NOTICE TO ENTER APPEARANCE**

To the Clerk of the Court:

Pursuant to Maryland Rule 2-131 (a) please Enter the Appearance of Michael D. Vogelstein  
as Attorney for the Protestants.



Michael D. Vogelstein  
201 North Charles Street  
Suite 801  
Baltimore, Maryland 21201  
(410) 727-3000

Attorney for the Protestants

97 NOV -4 PM 12:43

RECEIVED  
COUNTY BOARD OF APPEALS

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**MICHAEL D. VOGELSTEIN**

ATTORNEY AT LAW

201 NORTH CHARLES STREET

SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

October 29, 1997

*Send to  
C B A  
JES  
10/31/97*

Clerk  
Baltimore County Zoning Commissioner  
Suite 405, County Courts Bldg.  
401 Bosley Avenue  
Towson, Maryland 21204

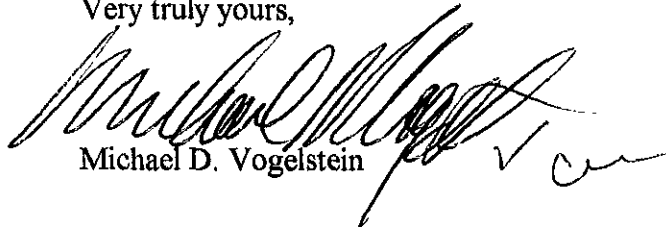
RE: Case No.: 97-303-SPH

Dear Clerk:

Please find enclosed the foregoing Notice to Enter Appearance to be filed in the above entitled matter.

Thanking you in advance for your anticipated cooperation and consideration, I remain

Very truly yours,

  
Michael D. Vogelstein

MDV/km

Enclosure

97 NOV -4 PM 12:42

RECEIVED  
COUNTY BOARD OF APPEALS

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Baltimore County  
Zoning Commissioner  
Office of Planning

Suite 405, County Courts Bldg.  
401 Bosley Avenue  
Towson, Maryland 21204  
410-887-4386

August 11, 1997

Julius W. Lichter, Esquire  
Levin and Gann  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204

RE: Petition for Special Hearing  
Case No. 97-303-SPH  
Property: 12026-28 Park Heights Avenue  
Hi-Caliber Towing, Inc., Petitioner

Dear Mr. Lichter:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been Dismissed, in accordance with the attached Order.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn  
encl.

c: Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, Maryland 21201  
c: Mr. Evan M. Shifren  
12026-28 Park Heights Avenue  
Owings Mills, Md. 21117

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**MICHAEL D. VOGELSTEIN**

ATTORNEY AT LAW

201 NORTH CHARLES STREET

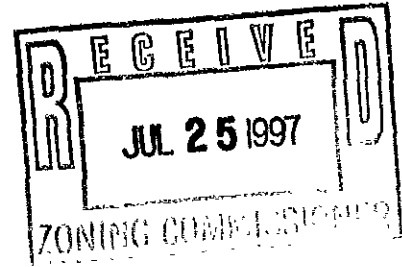
SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

July 24, 1997



Lawrence E. Schmidt  
Zoning Commissioner of  
Baltimore County  
County Courts Building  
4<sup>th</sup> Floor  
Towson, Maryland 21204

RE: Petition For Special Hearing  
Evan and Cindy Shifren/Hi-Caliber Towing, Inc.  
12026 Park Heights Avenue  
Case No. 97-303-SPH

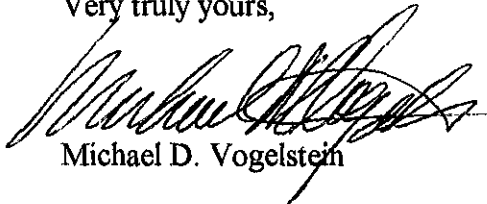
Dear Mr. Schmidt:

Please find enclosed the Protestant's Motion To Strike Amendment, to be filed in the above entitled matter.

In the event that you have any questions, please do not hesitate to contact me.

Thanking you in advance for your anticipated cooperation and consideration, I remain,

Very truly yours,



Michael D. Vogelstein

MDV/km

Enclosure

cc: Julius W. Lichter

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IN THE MATTER OF:  
PETITION FOR SPECIAL HEARING  
ON PROPERTY LOCATED AT  
12026 PARK HEIGHTS AVENUE  
OWINGS MILLS, MARYLAND  
BALTIMORE COUNTY  
HI-CALIBER TOWING, INC.-LES SEE  
EVAN N. SHIFREN-OWNER

BEFORE THE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
CASE NO.: 97-303 SPH

\* \* \* \* \*

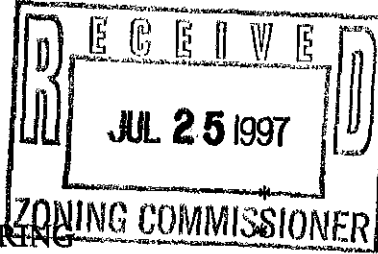
**ORDER**

The Court having read and considered the Motion To Strike Amendment, having heard arguments of Counsel and good cause appearing, it is this \_\_\_\_\_ day of August, 1997 by the Zoning Commissioner of Baltimore County:

HEREBY ORDERED, that the Motion To Strike Amendment be and the same is hereby granted.

\_\_\_\_\_  
JUDGE

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IN THE MATTER OF:  
PETITION FOR SPECIAL HEARING  
ON PROPERTY LOCATED AT  
12026 PARK HEIGHTS AVENUE  
OWINGS MILLS, MARYLAND  
BALTIMORE COUNTY  
HI-CALIBER TOWING, INC.-LES SEE  
EVAN N. SHIFREN-OWNER

BEFORE THE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
CASE NO.: 97-303 SPH

\* \* \* \* \*

**MOTION TO STRIKE AMENDMENT**

Now comes the Protestants, by Michael D. Vogelstein, their attorney, pursuant to Section 500.7 and Appendix E of the Baltimore County Zoning Regulations respectfully moves this Honorable Commission to Strike the Amendment contained within the "Pre-Trial Memorandum" of the Petitioner and in support thereof states the following:

1. That on or about January 21, 1997, the Petitioners herein, Hi-Caliber Towing Inc., and Evan and Cindy Shifren filed their Petition for Special Hearing requesting the following:

a. To approve the existence of a valid nonconforming fuel service station with accessory vehicle repairs pursuant to Baltimore County Zoning Regulation, Section 101 and 104 where the subject property has been continuously used or intended to be used for the retail sale of automotive fuel;

b. To determine whether the nonconforming fuel service station and accessory automobile repair uses have been abandoned pursuant to Baltimore County Zoning Regulation Sections 101 and 405.7;

c. To determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the subject property pursuant to Baltimore County Zoning Regulation Section 405.7 E.

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2. On February 7, 1997, undersigned Counsel forwarded the attached letter marked Exhibit No. 1 to W. Carl Richards, Supervisor of the Baltimore County Department of Permits requesting the Petition to be denied upon the grounds of Res Judicata in that this matter was tried before the County Board of Appeals under Case No. V93-442SPH upon the identical issues presented above. The Board of Appeals Ordered that the Petition for Special Hearing for the use of a nonconforming service station be denied on December 9, 1994.

3. On December 28, 1995, the Honorable John F. Fader II affirmed the decision of the County Board of Appeals denying for the use of a nonconforming service station to High-Caliber Towing, Inc. at 12026 Park Heights Avenue. Copies of said Orders are attached to Protestants Motion to Dismiss Petition for Special Hearing previously filed on July 11, 1997.

4. On May 22, 1997 this Honorable Commission, per Commissioner Schmidt requested Counsel to file Memoranda of Law concerning the doctrine of res judicata upon the requests presented in the Petition for Special Hearing filed by High-Caliber Towing, Inc. and scheduled a Hearing on August 6, 1997 upon the above issues. Commissioner Schmidt also advised Counsel for the Petitioner to post the property in accordance with the second paragraph of Baltimore County Zoning Regulation 500.7 which states in part "if the petition relates to the specific property, notice of the time and place of hearing shall be conspicuously posted on the property for a period of at least fifteen (15) days before the time of the hearing. ... the notice shall describe the property if any, and action requested in the Petition." Obviously, the action requested in the Petition should be contained, word for word on the required posting.

5. In accordance with Commissioner Schmidt's request, the Protestants filed their Motion To Dismiss Petition For Special Hearing and Memorandum Of Law In Support Of The Motion To Dismiss Petition For Special Hearing and attached Exhibits thereto addressing the requests contained in the Special Hearing filed by High-Caliber Towing and Evan and Cindy

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Shifren.

6. On or about July 14, 1997, undersigned Counsel received a document entitled "Pre-Trial Memorandum" filed by the Petitioners and upon reading same was shocked to learn that contained within the "Pre-Trial Memorandum" was an amendment to the Petition for Special Hearing, not in conformity with Baltimore County Zoning Regulation 500.7 and Appendix E. The amendment requested the Zoning Commissioner to determine that "the nonconforming service garage, as a principle use, constitutes a legal nonconforming use pursuant to Sections 104.1 and 405 of the Baltimore County Zoning Regulations and withdrew their request for the third item contained in the original Petition.

7. It is quite extraordinary that the Petitioners would wait three and one-half (3 ½ ) years to decide to file an amendment requesting the Commission to determine that the service station garage and not the service station itself was the principle use of the property. It is also noteworthy that Petitioners did not advise the Protestants nor this Commission of its intention to amend the original Petition for Special Hearing prior to the last day of the filing deadline. Additionally, there has been absolutely no showing that the posting on the property contains the amendment to the Petition as required by Rule 500.7 nor is it in accordance with Appendix E. of Baltimore County Zoning Regulations.

8. It is patently unfair of the Petitioners to attempt to amend its Petition in such a manner, knowing full well that the Protestants could not properly respond to the amendment within the time prescribed by Commissioner Schmidt as it was filed on the last day possible.

9. It is quite obvious that the Petitioners are well aware that the original Petition for the Special Hearing contains the three elements necessary to invoke the doctrine of res judicata, i.e. identical parties, identical claims and final judgement on the merits which precludes subsequent litigation and justifies dismissal of the Petition for Special Hearing. Esslinger vs.

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Baltimore City, 95 Maryland App. 607, 622 A. 2d 774 (1993).

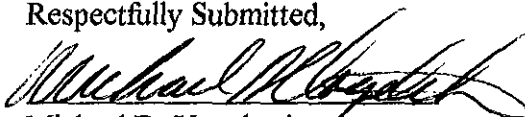
10. This is a veiled attempt by the Petitioners to change one of the three elements necessary to invoke the doctrine of res judicata as discussed within the Motion to Dismiss. It was incumbent upon the Petitioners to raise this issue well before July 11, 1997 because the initial action was decided on December 9, 1994 by the County Board of Appeals and affirmance by the Circuit Court for Baltimore County was conclusive. Rolands Vs. Harris 320 Md. App. 223, 577 A. 2<sup>nd</sup> 51 (1990) states that the initial action here is conclusive "not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit."

11. The Petitioners cannot reasonably argue that the delay in filing the amendment was attributable to prior Counsel nor through their own ignorance of the law. Indeed, on December 2, 1993, a letter from the Zoning Administration was forwarded to the Shifrens denying their request for a zoning determination concerning a service garage without pumps and tanks. A copy of the letter is attached hereto marked Exhibit No. 2.

12. It was the Petitioner's burden to have raised this issue in 1993 and certainly during the hearing before the County Board of Appeals in December 1994. Not having raised the issue prior to July 11, 1997, the Petitioners are now deemed to have waived the issue because as stated in Rolands, *infra* "the initial action is conclusive...as to all matters which with propriety could have been litigated in the first suit."

WHEREFORE, the Protestants respectfully move this Honorable Commission to strike the amendment contained within the Petitioners "Pre-Trial Memorandum" and dismiss the Petition for Special Hearing.

Respectfully Submitted,



Michael D. Vogelstein  
201 North Charles Street  
Suite 801  
Baltimore, Maryland 21202  
(410) 727-3000

Attorney for the Protestants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of July, 1997 that a copy of the foregoing Motion to Strike Amendment was mailed, postage pre-paid to: Julius W. Lichter, Levin & Gann, P.A., 305 W. Chesapeake Ave., Towson, Maryland 21204, Attorney for the Petitioners.



Michael D. Vogelstein

MICROFILMED



**MICHAEL D. VOGELSTEIN**

ATTORNEY AT LAW

201 NORTH CHARLES STREET

SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

February 7, 1997

W. Carl Richards, Jr.  
Baltimore County Department of Permits  
and Development Management  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Drop-Off Petition (Item #303)  
12026-27 Park Heights Avenue  
4<sup>th</sup> Election District

Dear Mr. Richards:

Please be advised that I represent numerous interested parties in the above entitled matter. As you may be aware, this matter was fully litigated in the Circuit Court for Baltimore County and Hi-Caliber Towing, Inc.'s Appeal Petition was denied.

I have enclosed copies of Judge Fader's Memorandum Opinion and Judgement Affirming the Board of Appeals of Baltimore County denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026 Park Heights Avenue. Pursuant to Judge Fader's Order, I am requesting you dismiss the Petition for Special Hearing upon the basis of Res Judicata.

I will be unavailable to attend the Special Hearing scheduled on February 25, 1997 at 2:00 p.m. due to a previously scheduled Deposition in the matter of Quamina vs. Linen, et al., Circuit Court for Baltimore County case number 03-C-96-003053 MT, said matter previously scheduled on February 25, 1997 at 2:30 p.m., per attached copy.

In the event you are unwilling to dismiss the Special Hearing, kindly postpone the Hearing so that I may attend and provide additional documentation and/or testimony in opposition to the Petition.



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February 7, 1997  
W. Carl Richards, Jr.  
Page 2

Thanking you in advance for your anticipated cooperation and consideration, I remain,

Very truly yours,



Michael D. Vogelstein

MDV/ldw

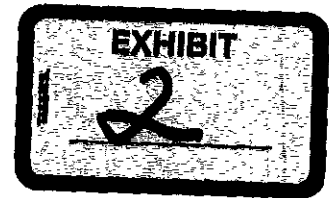
cc: Julius W. Lichter, Esq.  
Don Roscoe, Supervisor of Zoning Review

Enclosures

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204



(410) 887-3353

December 2, 1993

Mr. Evan Shifren  
Hi-Caliber Towing & Auto Service, Inc.  
12026 Park Heights Avenue  
Owings Mills, MD 21117

RE: Fuel Tank and Pump Removal  
from a Nonconforming Auto  
Service Station.  
Use change to a service garage.  
12026 Park Heights Avenue  
4th Election District  
Zoning Case V-93-442-SPH  
85-167-SPH

Dear Mr. Shifren:

This letter references your correspondence in which you request a zoning determination that an existing automotive service station may "remove the tanks and pumps from property and still remain a service garage."

A review of office records indicates that this site was approved as a nonconforming automotive service station use in zoning case V-93-442-SPH on October 18, 1993 by the Deputy Zoning Commissioner. It is my understanding that this site is located in a residential (R.C.-5) zone. Based on this information, I must apply Section 104.1 the Baltimore County Zoning Regulations (BCZR) to your question. This states that:

Section 104--NONCONFORMING USES {B.C.Z.R., 1995.}

104.1--A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. {B.C.Z.R., 1955; Bill No. 18, 1976; Bill No. 124, 1991.}

As you can see this regulation strictly forbids any use change whatsoever with the loss of the nonconforming status as a result of

Mr. Evan Shifren  
Page 2  
December 2, 1993

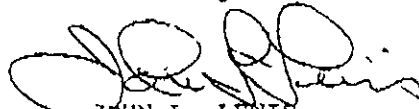
any such change. The BCZR defines an automotive service station as: "A structure or land used or intended to be used primarily for the retail sale of automotive fuel, but not a truck stop". A service garage is defined as: "A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale".

The fact that these uses are under separate definitions in the BCZR clearly indicates that the proposed removal of the fuel tanks and pumps while still maintaining a proposed service garage use would be abandonment of the service station and a change in use which will conflict with Section 104.1. Regretfully, this could not be approved by this office. Please be aware that Section 405.b, BCZR further addresses any abandonment of service stations. (copy attached)

Should you wish to challenge this interpretation Section 500.7, BCZR allows you to request a zoning special hearing for a ruling from the zoning commissioner.

Should you have any questions, please do not hesitate to contact me at 887-3391.

Sincerely,

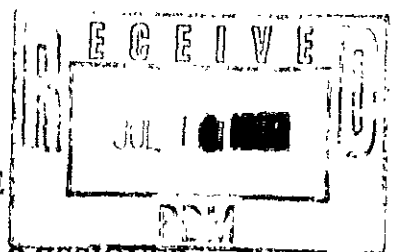
  
JOHN L. LEWIS  
Planner II

JLL/jaw

c: V-93-442-SPH  
✓85-167-SPH

IN THE MATTER OF:  
PETITION FOR SPECIAL HEARING  
ON PROPERTY LOCATED AT  
12026-28 PARK HEIGHTS AVENUE  
OWINGS MILLS MARYLAND 21117  
HI-CALIBER TOWING, INC. - LESSEE  
EVAN N. SHIFREN-OWNER

BEFORE THE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
Case No.: 97-303-SPH



\* \* \* \* \*

MOTION TO DISMISS PETITION FOR SPECIAL HEARING

Now comes the Protestants, by Michael D. Vogelstein, their attorney, pursuant to Section 500.7 of the Baltimore County Zoning Regulations respectfully moves this Honorable Commission to dismiss the Petition for Special Hearing filed by Hi-Caliber Towing, Inc. and Evan N. Shifren and in support thereof states the following:

1. Hi-Caliber Towing Inc., by and through its owner Evan N. Shifren has filed a Petition for Special Hearing before this Honorable Commission requesting a Special Hearing to:

- a) approve a valid nonconforming fuel service station with accessory vehicle repairs;
- b.) to determine whether the fuel service station and uses have been abandoned;
- c) to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities pursuant to Section 405.7 E.

2. The issues contained within the Petition for Special Hearing were previously litigated before this Honorable Commission, before the County Board of Appeals, as well as the Circuit Court for Baltimore County on appeal .

3. Hi-Caliber Towing, Inc. through its owner, Evan N. Shifren previously petitioned this Honorable Commission for a Special Hearing for the use of a nonconforming service station and whether an abandonment of an automotive service station was found to exist.

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BALTIMORE COUNTY ZONING COMMISSION

4. On December 9, 1994, the County Board of Appeals of Baltimore County, in case number V93-442-SPH rendered its unanimous decision stating on page four of the opinion " The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 any abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated," a copy of which is attached hereto, marked Exhibit number (1) one.

5. In accordance, therewith, the County Board of Appeals of Baltimore County "Ordered that the Petition for Special Hearing for the use of a nonconforming service station be and is hereby Denied; and it is further Ordered that such use shall be terminated no later than (30) days from the date of this Order."

6. Hi-Caliber Towing, Inc. filed its Petition for Judicial Review of the decision of the County Board of Appeals of Baltimore County to the Circuit Court for Baltimore County and, additionally, moved to stay the imposition of the County Board of Appeals order to terminate its use.

7. On February 6, 1995 the Honorable Robert E. Cadigan denied the Petitioner's Motion to Stay the Imposition of the Order to terminate Hi-Caliber Towing, Inc's use of the abandoned property located at 12026-28 Park Heights Avenue, a copy of which is attached hereto, marked Exhibit number (2) two.

8. Hi-Caliber Towing, Inc., unfortunately, has been in continuous violation of the Order of the County Board of Appeals as well as Judge Cadigan's denial of the motion to stay and, to this day Hi-Caliber Towing, Inc. has been in constant, illegal and unauthorized use of the property as a nonconforming service station as admitted to by council for Hi-Caliber Towing, Inc. before this

Honorable Commission on May 22, 1997.

9. On December 28, 1995, the Honorable John F. Fader II affirmed the opinion of the Board of Appeals that the subject property had been abandoned and affirmed the termination of the property as a nonconforming service station to Hi-Caliber Towing, Inc, a copy of which is attached hereto marked Exhibit number three (3).

10. This is the third Order by a Court of competent jurisdiction terminating the use of the property as a nonconforming service station to Hi-Caliber Towing, of which Hi-Caliber Towing has paid absolutely no heed and is in continuous and flagrant violation by continuing to use the property as a nonconforming service station.

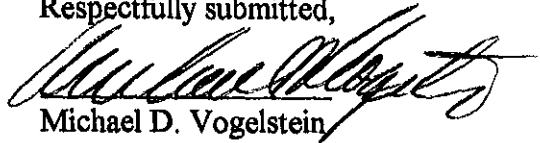
11. This matter is barred upon the doctrine of res judicata, as the parties in the present litigation are identical to the parties in the prior litigation; the claim presented in the present petition is identical to the claim presented in the prior litigation before the County Board of Appeals, as well as to the Circuit Court for Baltimore County and, thirdly, a final judgment on the merits was rendered not only by the County Board of Appeals, and in addition thereto, by Judge Fader in the Circuit Court of Baltimore County.

12. The three requirements to support dismissal upon a claim for res judicata are directly on point in this matter and, in accordance with the applicable case law, requires this matter to be dismissed as the Petition for Special Hearing is precluded from subsequent litigation, all of which more fully appears in the attached Memorandum of Law in support of this Motion to Dismiss.

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WHEREFORE, the Protestants respectfully move this Honorable Commission to Dismiss  
the Petition for Special Hearing.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael D. Vogelstein".

Michael D. Vogelstein  
201 N. Charles Street  
Baltimore, Maryland 21202  
(410) 727-3000


Attorney for the Protestants

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this eleventh day of July, 1997 that a copy of the foregoing Motion to Dismiss Petition for Special Hearing was mailed, postage prepaid to: Julius W. Lichter, Levin & Gann, P.A., 305 W. Chesapeake Ave., Towson, Maryland 21204, Attorney for the Protestants.



Michael D. Vogelstein

MICROFILMED

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. V93-442-SPH

CASE NO. V93-442-SPH

\* \* \* \* \*

This case comes before the Board on appeal from a decision of the Deputy Zoning Commissioner in which a Petition for Special Hearing was granted, based on the determination that no abandonment of an automotive service station was found to exist. The case was heard this day, Thursday, November 3, 1994, in its entirety, and public deliberation was held on Tuesday, November 15, 1994 at 9:30 a.m.

Counsel for the Protestants in this matter asserted that the towing business of the owner/operator, Hi-Caliber Towing, Inc., is not in compliance with the zoning classification of the subject site at 12026 Park Heights Avenue. Although the property had a nonconforming use as a service station for many years, Hi-Caliber's use is now argued to be in violation of Section 104.1 of the Baltimore County Zoning Regulations (BCZR).

The regulation reads as follows:

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

In this de novo hearing, the Owner/Operator had the burden of

EXHIBIT #1

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producing testimony and evidence to show that nonconforming use of the subject property has been continuous. Purchased in 1992 by the owners, Evan and Cindy Shifren, testimony was offered by several witnesses who said that the service was never discontinued, particularly for as long as a year and one day. The matter of the discontinued nonconforming use covers the time period of 1985-1988.

Charles Runkles, Vice President of N.B.S., the commercial realtor that purchased the site in 1988, testified to his familiarity with the service station for 13 years as a customer and nearby resident. However, for the time span in question, Mr. Runkles was not certain of the station's operations, but always saw activity on the site as a viable business.

Ms. Bonnie Haines, apartment resident at 1253 Park Heights Avenue, testified that she was a weekly customer of the service station during the period of 1985 to 1988. In her testimony, Ms. Haines acknowledged that her husband performed various jobs for the Petitioner and was a family friend of the Shifrens.

Mr. Harvey Shifren, father of the operator and a long-time property owner in the area, testified that the property had always been in continuous use since 1976 as an Amoco or Texaco station. He remembered his son towing vehicles for the station.

Cindy and Evan Shifren testified to their purchase of the site in September 1992 after 18 years with a towing service from other locations.

Testifying for the Protestants were two previous operators of

the service station at the site, Mr. James Hammersla and Mr. Ronald Goodman. Mr. Hammersla reviewed his operations at the site which terminated in August 1985, because of County restrictions on the operation, and his eventual bankruptcy. Since that time, he recounted passing the station regularly for the next several years and saw no gasoline business, no maintenance, and a vacated site.

Mr. Goodman leased the site in September 1988 and obtained a trader's license. Up for auction, he had inspected the station and found the property overgrown in weeds and debris, no hoses on the pumps, and broken windows. Mr. Goodman testified that the electric meters had been removed. He had the pumps repaired and re-established the business in September 1988 for the next 15 months. He had been told by the County that the use was okay. In obtaining a license, the "year and a day" regulation of Section 104.1 was not considered at the time.

Several subpoenaed witnesses, not appearing at the initial hearing before the Deputy Zoning Commissioner, testified as protestants in this case. Mary Fitchett, a resident immediately across the road from the site, testified of her father's original ownership and incidents that led to restrictions imposed on the service station in 1985. Ms. Fitchett testified that the station was abandoned and became a derelict property from Mr. Hammersla's closing in 1985 to Mr. Goodman's opening of the station in 1988.

Carl Nathanson, 1219 Park Heights Avenue, a resident one block from the site since 1985, recalled the location as abandoned,

overgrown, strewn with wrecked cars, engine blocks and tires, and a property that should be condemned. Mr. Nathanson saw no operation on the site until Mr. Goodman arrived in 1988. Unfamiliar with zoning laws, he raised no objection to the resumption of business on the site in 1988.

The Board is cognizant of conflicting testimony as to the continuous use of 12026 Park Heights Avenue as a service station from the time it ceased operations by Mr. Hammersla in 1985 until its lease by Mr. Goodman in 1988. Ongoing observations by Mr. Hammersla of the station he had abandoned in 1985 and Mr. Goodman's rehabilitation of the derelict property in 1988 are persuasive to this Board that the operation of the service station as a nonconforming use was discontinued for more than one year. Furthermore, the daily observation of concerned residents living approximate to the location is convincing that the nonconforming use of the site for a service station had been discontinued for some time.

Irrespective of the issue of trader's licenses to operators at the station since 1988, the regulations of Section 104.1 prevail in this matter of the nonconforming use. The Owner/Operator has the burden of producing testimony and evidence showing that nonconforming use of the property has been continuous. The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 -- any

Case No. V93-442-SPH N.B.S., Inc. /Hi-Caliber Towing, Inc. 5  
abandonment or discontinuance of a nonconforming use for a period  
of one year or more), the nonconforming use at this property has  
been terminated.

O R D E R

IT IS THEREFORE this 9th day of December, 1994 by the  
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing for the use of  
a nonconforming service station be and is hereby DENIED; and it is  
further

ORDERED that such use shall be terminated no later than thirty  
(30) days from the date of this Order.

Any petition for judicial review from this decision must be  
made in accordance with Rule 7-201 through Rule 7-210 of the  
Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Harry E. Buchheister, Jr.  
Harry E. Buchheister, Jr.

Robert O. Schuetz  
Robert O. Schuetz

HI-CALIBER TOWING, INC.

Petitioner

v.

PETITION OF SPECIAL HEARING  
ON PROPERTY LOCATED AT:  
12026 PARK HEIGHTS AVENUE

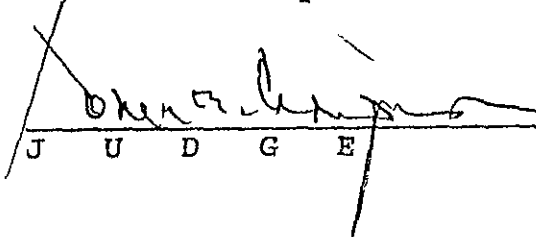
Appellees/Protestants

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\*  
\* Case No.: 95CV00176  
\*  
\* APPEAL FROM COUNTY  
\* BOARD OF APPEALS  
\*  
\* Case No.: V93-442-SPH  
\* \* \* \* \*

ORDER

The Court, having read and considered the Motion to Stay Imposition of Order, Answer in Opposition thereto and Memorandum of Law, having heard arguments of Counsel and good cause appearing, it is this 6<sup>th</sup> day of February, 1995 by the Circuit Court for Baltimore County:

HEREBY ORDERED, that the Petitioner's Motion to Stay Imposition of Order be and the same is hereby denied.

  
J U D G E

COPIES SENT TO:

Gary S. Mandel, Esquire  
Kathi Weidenhammer, Esquire  
Michael D. Vogelstein, Esquire

EXHIBIT # 2

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IN THE MATTER OF	*	IN THE CIRCUIT COURT
N.B.S., INC. AND HI-CALIBER	*	FOR BALTIMORE COUNTY
TOWING, INC./OWNER/OPERATOR	*	CASE NO. V 93-442-SPH
*****		

MEMORANDUM OPINION AND JUDGMENT  
AFFIRMING BOARD OF APPEALS

This court affirms the opinion of The Board of Appeals of Baltimore County denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026 Park Heights Avenue. It is so ORDERED by the Circuit Court for Baltimore County this 28th day of December, 1995.

A.

The parties agree that the real property at 12026 Park Heights Avenue had a nonconforming use as a service station for many years. At issue is whether that nonconforming use was lost due to the fact the nonconforming use had been abandoned or discontinued for a period of one year or more. The law is as follows:

Section 104.1 of the Baltimore County Zoning Regulations (BCZR)

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

There was conflicting evidence before the Board of Appeals as to whether there was abandonment in use of the premises. The Board of Appeals decided, on the basis of this conflicting evidence, the more credible evidence showed that despite the issuance of a trader's



EXHIBIT # 3

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license to the operators of the station since 1988, an abandonment had been shown. Thus, the owner/operator had not shown a continuous nonconforming use of the property.

B.


When we had a hearing in this case on 11/30/95, there was discussion as to whether any requirement existed as to who had the burden of proof on appeal to the Board of Appeals from a decision of the Deputy Zoning Commissioner. A review of the BCZR in this court did not show there is any presumption of correctness attendant to the Deputy Zoning Commissioner's decision. Likewise, there was nothing found in those regulations ascribing to one party or the other the burden of proof. Thus, it seems reasonable and consistent with all other areas of Maryland civil law that the burden of proof rested with the petitioner asking for the nonconforming use certification. In the words of the Board in its written decision, that burden was not sustained:

The Owner/Operator has the burden of producing testimony and evidence showing that nonconforming use of the property has been continuous. The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 -- any Case No. V93-442-SPH N.B.S., Inc./ Hi-Caliber Towing, Inc. abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated.

It is well understood by both parties here that this court's review of an agency decision is limited, and the court cannot substitute its decision for that of the agency. As important as anything else is the law that holds that the agency is the trier of fact, and judge of the credibility of the witnesses.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

Commissioner v. Cason, 34 Md. App. 487, 508, 368 A.2d 1067 (1977). Accordingly, the opinion of the Board of Appeals is affirmed.

  
John F. Fader II  
Judge

JFF:am

cc: Michael Vogelstein, Esq.  
321 N. Calvert Street  
Baltimore, MD 21201

G. Warren Mix, Esq.  
Turnbull, Mix & Farmer  
706 Washington Avenue  
Towson, Maryland 21204

IN THE MATTER OF:  
PETITION FOR SPECIAL HEARING  
ON PROPERTY LOCATED AT  
12026-28 Park Heights Avenue  
OWINGS MILLS, MARYLAND 21117  
HI-CALIBER TOWING, INC.-LESSEE  
EVAN N. SHIFREN-OWNER

\* BEFORE THE  
\*  
\* ZONING COMMISSIONER  
\*  
\* OF  
\*  
\* BALTIMORE COUNTY  
\*  
\* Case No.: 97-303-SPH  
\* \* \* \* \*

\* \* \* \* \*

ORDER

The Court, having read and considered the Motion to Dismiss the Petition for Special Hearing and Memoranda of Law, having heard arguments of Counsel and good cause appearing, it is this \_\_\_\_\_ day of \_\_\_\_\_, 1997 by the Zoning Commissioner of Baltimore County:

HEREBY ORDERED, that the Motion to Dismiss the Petition for Special Hearing be and the same is hereby granted.

\_\_\_\_\_  
J U D G E

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IN THE MATTER OF:	*	BEFORE THE
PETITION FOR SPECIAL HEARING	*	
ON PROPERTY LOCATED AT	*	ZONING COMMISSIONER
12026 PARK HEIGHTS AVENUE	*	
OWINGS MILLS, MARYLAND	*	OF
HI-CALIBER TOWING, INC.-LESSEE	*	BALTIMORE COUNTY
EVAN N. SHIFREN-OWNER	*	CASE NO.: 97-303 SPH

\*\*\*\*\*

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PETITION FOR  
SPECIAL HEARING**

Now comes the Protestants by Michael D. Vogelstein, their attorney, in support of their Motion to Dismiss files this Memorandum of Law and in support thereof states the following:

**UNDISPUTED FACTS**

The parties in this matter consist of Evan N. Shifren, owner of Hi-Caliber Towing Inc., located at 12026-28 Park Heights Avenue, in Owings Mills, Maryland. The Protestants, herein include neighbors contiguous to the subject property, as well as neighborhood associations in the surrounding area. The identical parties have been involved in litigation concerning the subject property for a number of years.

On November 15, 1994, the County Board of Appeals under Case Number V-93-42-SPH heard the identical parties on Appeal from an adverse decision of the Deputy Zoning Commissioner concerning a Petition for Special Hearing to determine whether an abandonment of the automotive service station was found to exist. The owner, Evan N. Shifren, of Hi-Caliber

Towing, Inc. , among others testified on behalf of the Petitioner during that hearing, several of the Protestants that are present in this matter testified before the County Board of Appeals on November 15, 1994. On December 9, 1994, the Board on page four (4) of its opinion stated " The preponderance of the testimony indicates the subject property had in fact been abandoned and in accordance with the effective regulations (Section 104.1...) A nonconforming use at this property has been terminated." The County Board of Appeals unanimously Ordered that the Petition for Special Hearing for the use of a nonconforming service station be and is hereby denied and further Ordered that such use shall be terminated no longer than thirty (30) days from this Order. A copy of the County Board of Appeals Opinion is attached hereto, marked Exhibit number (1) one.

A timely Petition for Judicial Review of the County Board of Appeals Order terminating the use of the property was filed in the Circuit Court for Baltimore County. A Motion to Stay the imposition of the Order was filed and Denied by the Honorable Robert E. Cadigan, on February 6, 1995. A copy of said Order is attached hereto marked Exhibit Number (2) two.

On December 28, 1995, the Honorable John F. Fader II issued his Memorandum Opinion and Judgment affirming the Board of Appeals decision denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026-28 Park Heights Avenue. Although the Circuit Court for Baltimore County on two prior occasions as well as the County Board of Appeals terminated the use of a nonconforming service station to Hi-Caliber Towing, Mr. and Mrs Shifren continue to use the property in violation of the previous Court's Order, as stated by Counsel for the Petitioners before this Honorable Commission on May 22, 1997.

A Petition for Special Hearing was filed with the Zoning Commissioner of Baltimore County by Hi-Caliber Towing, Inc., Lessee and Evan N. Shifren-owner on or about January 21, 1997

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requesting a Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the Administrative procedures to require the cessation of business activities pursuant to Section 405.7 E. A copy of the Petition for Special Hearing was properly forwarded to the identical parties in the prior action before the Commission, i.e. the Protestants herein. The Petition of Hi-Caliber Towing, Inc. requesting a nonconforming fuel service station is identical to the Petition for Special Hearing filed before the Commission and Denied on December 9, 1994 by the Commission and Affirmed on December 28, 1995 by Judge Fader and was a Final Judgment on the merits.

The present Petition for Special Hearing is before this Honorable Commission for a second time. On May 22, 1997 this Honorable Commission requested Counsel to file a Memoranda of Law concerning the issue of res judicata and collateral estoppel and whether this Administrative Agency is entitled to full preclusive effect.

### **RES JUDICATA**

A case on point with the instant matter is Esslinger vs. Baltimore City, 95 Md. App. 607 (1993) 622 A.2d 774, wherein the homeowner Donald F. Esslinger filed a complaint alleging the denial of his civil rights from the refusal of the Board of Municipal Zoning Appeals to allow him to erect and maintain a satellite dish. The Circuit Court for Baltimore City granted the city's motion to dismiss the entire action as barred by res judicata and collateral estoppel and the homeowner Appealed. The court stated " Under Maryland law the requirements of res judicata or claim preclusion are: 1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute, 2) that the claim presented in the current action is identical to the one determined in the prior adjudication and 3) that there was a valid final judgment on the merits."

Cassidy vs. Board of Education, 316 Md.50, 57, 557 A.2d 227(1989).

“ If all three elements are present then the final judgement in the first claim bars the entire subsequent claim.” It cannot be disputed that the first, second, and third elements of the present action are identical to the prior action. Hi-Caliber Towing is the same Petitioner and the Protestants are the same parties in the earlier dispute. The claim presented in the current action is one for a nonconforming fuel service station. The claim in the prior action was for a valid nonconforming service station. Finally there was a final judgement in the Zoning case in the prior action which was affirmed by the Circuit Court of Baltimore County on the merits as to whether the nonconforming service station was abandoned.

Hi-Caliber Towing, Inc. may argue that the second element required for the claim preclusion, i.e. that the claim presented in the current action is not identical to the one determined in the prior action basing its argument upon the additional word fuel in valid nonconforming fuel service station changes the claim presented to this Commission.

The Court of Appeals in the case of Kansas City Board of Education vs. Billbrough, 309 Md.487, 525 A.2d, 232 (1987) concluded that the same evidence test improperly narrows the scope of the claim in the preclusion context. The court approved a different approach for determining a claim for preclusion purposes as follows:

1) when a valid and final judgment rendered in an action extinguishes the Plaintiff's claim pursuant to the rules of merger or bar, the claim extinguished includes all rights of the Plaintiff to remedies against the Defendant with respect to all or any part of the transaction, or series of connected transactions out of which the action arouse.

2) what factual grouping constitutes a “ transaction”, what groupings constitute a “series” are to be determined pragmatically, giving weight to such considerations as to whether the facts

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are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties expectations or business owners standing or usage." The Restatement Second of Judgments 1982 Section 24. Under the above "transaction" approach it is clear that the claim in a prior zoning case is identical to the present claim and it cannot be disputed that both arose from precisely the same use of a nonconforming service station. The facts of the two actions are thus related in space, origin and motivation. Both involved Hi-Caliber's request for and the Zoning Board's denial for the use of a nonconforming service station. The only difference in the present action is the addition of the word fuel to be incorporated in the phrase "nonconforming fuel service station." Maryland Courts have long recognized that such small differences in the postures of the zoning requests do not prevent application of res judicata. See Century 1 Condominium Ass'n, Inc. vs. Plaza Condominium Joint Venture, Inc. 64 Md. App 107, 113-14, 494 A.2d 713 (1985). Accordingly, the claim presented in this action is identical to that determined in the prior adjudication "all three res judicata elements are present. When this is so a Plaintiff may not litigate a claim for relief by switching legal theories." Bilbrough, 309 Md. at 500, 525 A.2d 232..

Counsel for HI-Caliber, Towing, Inc. has suggested, pursuant to section 500.7 of the Baltimore County Zoning regulation that this Honorable Commission is not required to follow prior orders of courts of competent jurisdiction rendering judgment upon the merits basing its argument that the Zoning Commissioner has discretion to pass such orders as he may deem necessary for the proper enforcement of all Zoning regulations. This argument is totally without merit and is not supported by the applicable case law. This original action was a Zoning Board decision, affirmed in an on the record appeal by the Circuit Court for Baltimore County. "It is crystal clear that a final judgement of a Circuit Court affirming a decision of an Administrative

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Agency is entitled to full preclusive effect.” Esslinger, Supra App 622 A.2d 781. Thus, the initial action here is conclusive “ not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit. Roland vs. Harris, 320 Md. 223, App 229, 577 A.2d 51 (1990).

Not only is the Hi-Caliber Towing, Inc’s. Petition for Special Hearing barred from further litigation on the basis of res judicata, it is also collaterally estopped from litigating issues decided in prior litigation. The elements of collateral estoppel are:

1) the issues raised in the prior action are identical with the issue presented in the action in question; 2) there is a prior judgment on the merit; 3) the party against whom estoppel is asserted was a party to the prior litigation. Batts vs. Lee, 949(F.Supp) 1229 (D.Md. 1996), Alston vs. Robinson, 791 (F.Supp) 569 D. Md. 1992). All three elements of collateral estoppel are also met in Hi-Caliber’s current Petition which, again, bars the claim from further litigation.

### **PETITION FOR SPECIAL HEARING SHOULD BE DISMISSED**

A. The first issue, raised in Hi-Caliber Towing Co, Inc current Petition for Special Hearing for the property located at 12026 Park Heights Avenue, addresses the existence of a valid nonconforming fuel service station with accessory vehicle repairs pursuant to Baltimore County Zoning Regulations , Sections 101 and 104 where the subject property has been continuously used or intended to be used for the retail sale of automotive fuel.

Section 101 defines a fuel service station as:

A structure or land used or intended to be used for the retail sale of automotive fuel, but not a truck stop. For the purpose of these regulations, any establishment which sells auto fuel retail shall be considered a fuel service station, unless it is classified as a truck stop or trucking facility.

The Board of Appeals for Baltimore County held that the property at 12026 Park Heights Avenue was abandoned during the period between 1985 and 1988. The Circuit Court for Baltimore County affirmed the decision of the Board of Appeals that there was an abandonment because Hi-Caliber Towing had not shown a continuing nonconforming use of the property at 12026 Park Heights Avenue.

Section 104.1 states that a:

A nonconforming use (as defined in section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

Subsection one of the Petition for Special Hearing for the property located at 12026 Park Heights Avenue is barred from any further litigation because the issue, as to the abandonment of the property at 12026 Park Heights Avenue has been decided by the Baltimore County Board of Appeals and affirmed by the Circuit Court for Baltimore County. A final judgment of a Circuit Court affirming decision is entitled to full preclusive effect. Esslinger v. Baltimore City, 622 A.2d 774,789(Md. App. 1993). Thus, the determination of the abandonment of the property at 12026 Park Heights Avenue by the Circuit Court for Baltimore County is conclusive "not only to all matters that have been decided in the original suit, but as to all matters with propriety could have been litigated in the first suit. Rowland v. Harrison, 577 A.2d 51 (1990). The determination of the fuel service station has been decided by the Circuit Court and is barred from any future litigation on grounds of res judicata and collateral estoppel.

**B.** The second issue contained in the Petition for Special Hearing is to determine whether the nonconforming fuel service station and accessory automobile repair uses have been abandoned

pursuant to Baltimore County Zoning Regulations Sections 101 and 405.7 respectively.

Section 405.7 specifically addresses abandoned fuel service stations. Under Section 405.7A the county council has recognized that an abandoned fuel service station can become a threat of the health, safety and welfare of the community, can have a decaying impact on surrounding properties and cause a deterioration of the use, value, and enjoyment of property in the neighborhood. The Circuit Court for Baltimore County affirmed the Zoning Board's determination that the property at 12026 Park Heights Avenue had been abandoned between 1985 and 1988. Witnesses testified that the property had become deteriorated, overgrown with weeds, the windows were busted out and the building was barely visible from the street. Furthermore, there was no electricity or running water on the property. Based upon the derelict status of the property at 12026 Park Heights Avenue the Board of Appeals ordered the property had been abandoned. The issue as to the status of the property at 12026 Park Heights Avenue is barred from any further litigation on grounds of collateral estoppel and res judicata.

C. The third issue addressed by Hi-Caliber Towing Inc.'s current Petition for Special Hearing for the property located at 12026 Park Heights Avenue attempts to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the subject property pursuant to Baltimore County Zoning Regulations Section 405.7.

Section 405.7 E. Proceedings to require removal states;

1. Whenever it shall be determined by the director of zoning administration And development management that a fuel service station has not been in continuous operation and that the premises have not been continuously maintained, the director shall issue a notice to the owner or agent to repair, correct, or take other appropriate action to remedy the specific deficiencies deficiencies enumerated in the notice.
2. If the deficiencies have not been corrected within a period of 90 days following the

date of the notice, the director of zoning administration and development management shall refer the matter to the zoning commissioner for a hearing, pursuant to Section 500.7, to require removal.

3. If, after notice and hearing pursuant to Section 500.7 of the zoning regulations, it is determined that a fuel service station has not been in continuous operation and not continuously maintained and corrected according to prior notice, and if it is further found that by reason of the continued vacancy, the structure and grounds lack reasonable or adequate maintenance, thereby causing deterioration and blighting influence on nearby properties and thereby depreciating the enjoyment, use or value of the property in the immediate vicinity to such an extent that it is harmful to the public health, welfare, safety, comfort or convenience of the neighborhood in which the station is situated, the zoning commissioner shall order the station's removal. For the purpose of the subsection, removal shall mean the removal by the owner of all above ground structures, including paving, and removal or abandonment in place of underground tanks in compliance with the provisions of COMAR 26.10.10.02 and section 14-300 (b) of the Baltimore County Code.

Section 500.7 allows for the Zoning Commissioner in his or her discretion to conduct hearings and pass orders subject to the right of appeal to the County Board of Appeals. On December 9<sup>TH</sup> 1994, the County Board of Appeals for Baltimore County Ordered that the Petition for Special Hearing for the use of a nonconforming service station for the property located at 12026 Park Heights Avenue be denied. The Circuit Court for Baltimore County affirmed the County Board's decision denying the use of a nonconforming service station to Hi-Caliber Towing. The question, as to the status of the property at 12026 Park Heights Avenue has previously been litigated. Thus, the claim of Hi-Caliber Towing Co., Inc. is barred from further litigation.

### CONCLUSION

Under Maryland law the basic rules of res judicata fully apply to affirmances of administrative decisions. Bethesda Ford, Inc v. Ford Motor Co., 572 F. Supp.623. The current Petition for

Special Hearing by Hi-Caliber Towing must be dismissed because it is barred on grounds of res judicata. Furthermore, the Circuit Court of Baltimore County has affirmed the decision of the County Board of Appeals. In Maryland the final judgment of a circuit court affirming the decision of an administrative agency is entitled to full preclusive effect. Esslinger, 622 A.2d 774.

For the reasons stated above, Hi-Caliber Towing, Inc.'s Petition for Special Hearing should be dismissed.

Respectfully submitted,

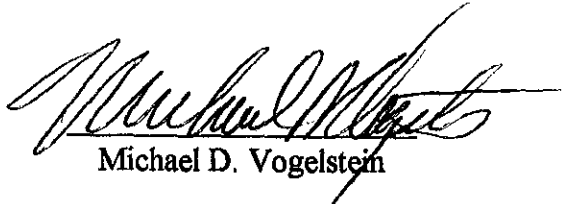
A handwritten signature in dark ink, appearing to read "Michael D. Vogelstein", is written over a horizontal line.

Michael D. Vogelstein  
201 N. Charles Street  
Baltimore, Maryland 21202  
(410) 727-3000

Attorney for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this eleventh day of July, 1997 that a copy of the foregoing Memorandum of Law In Support of Motion to Dismiss Petition for Special Hearing was mailed, postage pre-paid to: Julius W. Lichter, Levin & Gann, P.A., 305 W. Chesapeake Ave., Towson, Maryland 21204, Attorney for the Protestants.



Michael D. Vogelstein

IN THE MATTER OF:  
PETITION FOR SPECIAL HEARING  
ON PROPERTY LOCATED AT  
12026 PARK HEIGHTS AVENUE  
4TH ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT

N.B.S., INC. AND HI-CALIBER  
TOWING, INC. /OWNER /OPERATOR

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. V93-442-SPH

\* \* \* \* \*

O P I N I O N

This case comes before the Board on appeal from a decision of the Deputy Zoning Commissioner in which a Petition for Special Hearing was granted, based on the determination that no abandonment of an automotive service station was found to exist. The case was heard this day, Thursday, November 3, 1994, in its entirety, and public deliberation was held on Tuesday, November 15, 1994 at 9:30 a.m.

Counsel for the Protestants in this matter asserted that the towing business of the owner/operator, Hi-Caliber Towing, Inc., is not in compliance with the zoning classification of the subject site at 12026 Park Heights Avenue. Although the property had a nonconforming use as a service station for many years, Hi-Caliber's use is now argued to be in violation of Section 104.1 of the Baltimore County Zoning Regulations (BCZR).

The regulation reads as follows:

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

In this de novo hearing, the Owner/Operator had the burden of

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producing testimony and evidence to show that nonconforming use of the subject property has been continuous. Purchased in 1992 by the owners, Evan and Cindy Shifren, testimony was offered by several witnesses who said that the service was never discontinued, particularly for as long as a year and one day. The matter of the discontinued nonconforming use covers the time period of 1985-1988.

Charles Runkles, Vice President of N.B.S., the commercial realtor that purchased the site in 1988, testified to his familiarity with the service station for 13 years as a customer and nearby resident. However, for the time span in question, Mr. Runkles was not certain of the station's operations, but always saw activity on the site as a viable business.

Ms. Bonnie Haines, apartment resident at 1253 Park Heights Avenue, testified that she was a weekly customer of the service station during the period of 1985 to 1988. In her testimony, Ms. Haines acknowledged that her husband performed various jobs for the Petitioner and was a family friend of the Shifrens.

Mr. Harvey Shifren, father of the operator and a long-time property owner in the area, testified that the property had always been in continuous use since 1976 as an Amoco or Texaco station. He remembered his son towing vehicles for the station.

Cindy and Evan Shifren testified to their purchase of the site in September 1992 after 18 years with a towing service from other locations.

Testifying for the Protestants were two previous operators of



the service station at the site, Mr. James Hammersla and Mr. Ronald Goodman. Mr. Hammersla reviewed his operations at the site which terminated in August 1985, because of County restrictions on the operation, and his eventual bankruptcy. Since that time, he recounted passing the station regularly for the next several years and saw no gasoline business, no maintenance, and a vacated site.

Mr. Goodman leased the site in September 1988 and obtained a trader's license. Up for auction, he had inspected the station and found the property overgrown in weeds and debris, no hoses on the pumps, and broken windows. Mr. Goodman testified that the electric meters had been removed. He had the pumps repaired and re-established the business in September 1988 for the next 15 months. He had been told by the County that the use was okay. In obtaining a license, the "year and a day" regulation of Section 104.1 was not considered at the time.

Several subpoenaed witnesses, not appearing at the initial hearing before the Deputy Zoning Commissioner, testified as protestants in this case. Mary Fitchett, a resident immediately across the road from the site, testified of her father's original ownership and incidents that led to restrictions imposed on the service station in 1985. Ms. Fitchett testified that the station was abandoned and became a derelict property from Mr. Hammersla's closing in 1985 to Mr. Goodman's opening of the station in 1988.

Carl Nathanson, 1219 Park Heights Avenue, a resident one block from the site since 1985, recalled the location as abandoned,

overgrown, strewn with wrecked cars, engine blocks and tires, and a property that should be condemned. Mr. Nathanson saw no operation on the site until Mr. Goodman arrived in 1988. Unfamiliar with zoning laws, he raised no objection to the resumption of business on the site in 1988.

The Board is cognizant of conflicting testimony as to the continuous use of 12026 Park Heights Avenue as a service station from the time it ceased operations by Mr. Hammersla in 1985 until its lease by Mr. Goodman in 1988. Ongoing observations by Mr. Hammersla of the station he had abandoned in 1985 and Mr. Goodman's rehabilitation of the derelict property in 1988 are persuasive to this Board that the operation of the service station as a nonconforming use was discontinued for more than one year. Furthermore, the daily observation of concerned residents living approximate to the location is convincing that the nonconforming use of the site for a service station had been discontinued for some time.

Irrespective of the issue of trader's licenses to operators at the station since 1988, the regulations of Section 104.1 prevail in this matter of the nonconforming use. The Owner/Operator has the burden of producing testimony and evidence showing that nonconforming use of the property has been continuous. The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 -- any

Case No. V93-442-SPH N.B.S., Inc. /Hi-Caliber Towing, Inc.

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abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated.

O R D E R

IT IS THEREFORE this 9th day of December, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing for the use of a nonconforming service station be and is hereby DENIED; and it is further

ORDERED that such use shall be terminated no later than thirty (30) days from the date of this Order.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Harry E. Buchheister, Jr.  
Harry E. Buchheister, Jr.

Robert O. Schuetz  
Robert O. Schuetz

HI-CALIBER TOWING, INC.

Petitioner

v.

PETITION OF SPECIAL HEARING  
ON PROPERTY LOCATED AT:  
12026 PARK HEIGHTS AVENUE

Appellees/Protestants

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\*  
\* Case No.: 95CV00176  
\* APPEAL FROM COUNTY  
\* BOARD OF APPEALS  
\*  
\* Case No.: V93-442-SPH  
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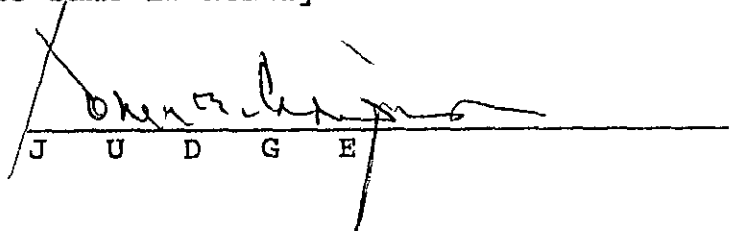
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ORDER

The Court, having read and considered the Motion to Stay Imposition of Order, Answer in Opposition thereto and Memorandum of Law, having heard arguments of Counsel and good cause appearing, it is this 6<sup>th</sup> day of February, 1995 by the Circuit Court for Baltimore County:

HEREBY ORDERED, that the Petitioner's Motion to Stay Imposition of Order be and the same is hereby denied.

  
J U D G E

COPIES SENT TO:

Gary S. Mandel, Esquire  
Kathi Weidenhammer, Esquire  
Michael D. Vogelstein, Esquire



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IN THE MATTER OF \* IN THE CIRCUIT COURT  
N.B.S., INC. AND HI-CALIBER \* FOR BALTIMORE COUNTY  
TOWING, INC./OWNER/OPERATOR \* CASE NO. V 93-442-SPH

\* \* \* \* \*

MEMORANDUM OPINION AND JUDGMENT  
AFFIRMING BOARD OF APPEALS

This court affirms the opinion of The Board of Appeals of Baltimore County denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026 Park Heights Avenue. It is so ORDERED by the Circuit Court for Baltimore County this 28th day of December, 1995.

A.

The parties agree that the real property at 12026 Park Heights Avenue had a nonconforming use as a service station for many years. At issue is whether that nonconforming use was lost due to the fact the nonconforming use had been abandoned or discontinued for a period of one year or more. The law is as follows:

Section 104.1 of the Baltimore County Zoning Regulations (BCZR)

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

There was conflicting evidence before the Board of Appeals as to whether there was abandonment in use of the premises. The Board of Appeals decided, on the basis of this conflicting evidence, the more credible evidence showed that despite the issuance of a trader's

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license to the operators of the station since 1988, an abandonment had been shown. Thus, the owner/operator had not shown a continuous nonconforming use of the property.

B.

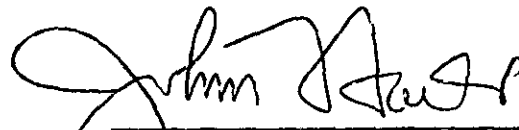
When we had a hearing in this case on 11/30/95, there was discussion as to whether any requirement existed as to who had the burden of proof on appeal to the Board of Appeals from a decision of the Deputy Zoning Commissioner. A review of the BCZR in this court did not show there is any presumption of correctness attendant to the Deputy Zoning Commissioner's decision. Likewise, there was nothing found in those regulations ascribing to one party or the other the burden of proof. Thus, it seems reasonable and consistent with all other areas of Maryland civil law that the burden of proof rested with the petitioner asking for the nonconforming use certification. In the words of the Board in its written decision, that burden was not sustained:

The Owner/Operator has the burden of producing testimony and evidence showing that nonconforming use of the property has been continuous. The Board is of the opinion that the preponderance of the testimony indicates that the subject property had in fact been abandoned, and in accordance with the effective regulations (Section 104.1 -- any Case No. V93-442-SPH N.B.S., Inc./ Hi-Caliber Towing, Inc. abandonment or discontinuance of a nonconforming use for a period of one year or more), the nonconforming use at this property has been terminated.

It is well understood by both parties here that this court's review of an agency decision is limited, and the court cannot substitute its decision for that of the agency. As important as anything else is the law that holds that the agency is the trier of fact, and judge of the credibility of the witnesses.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

Commissioner v. Cason, 34 Md. App. 487, 508, 368 A.2d 1067 (1977). Accordingly, the opinion of the Board of Appeals is affirmed.

  
John F. Fader II  
Judge

JFF:am

cc: Michael Vogelstein, Esq.  
321 N. Calvert Street  
Baltimore, MD 21201

G. Warren Mix, Esq.  
Turnbull, Mix & Farmer  
706 Washington Avenue  
Towson, Maryland 21204

97-3420

MICHAEL D. VOGELSTEIN

ATTORNEY AT LAW

201 NORTH CHARLES STREET

SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

7/14/97

8 Larry S

July 11, 1997

Lawrence E. Schmidt  
Zoning Commissioner  
Office of Planning and Zoning  
Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

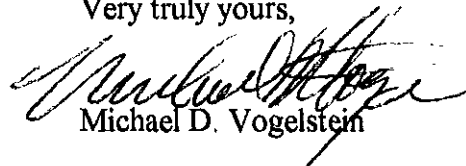
RE: Petition for Special Hearing  
Contract Purchaser: Hi Caliber Towing  
Legal Owner: Evan Shifren  
Property 12026-28 Park Heights Avenue  
Case no. 97-303-SPH

Dear Commissioner Schmidt,

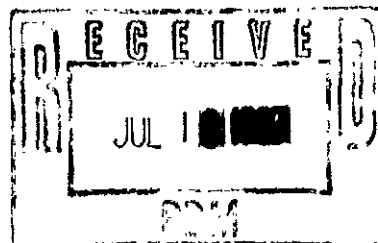
In accordance with your request, please find enclosed the Motion to Dismiss Petition for Special Hearing, Memorandum of Law in support thereof and all supporting documentation to be filed in the above entitled matter.

In the event I can be of further assistance, please feel free to contact me.

Very truly yours,

  
Michael D. Vogelstein

cc: Julius Lichter



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IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO APPROVE A NONCONFORMING  
FUEL SERVICE STATION AND  
SERVICE GARAGE AT 12026-28 PARK  
HEIGHTS AVENUE

Evan and Cindy Shifren and Hi-Caliber  
Towing Service, Inc.

Petitioner

BEFORE THE  
ZONING COMMISSIONER OF  
BALTIMORE COUNTY

Case No.: 97-303-SPH

**PRE-TRIAL MEMORANDUM**

Evan and Cindy Shifren and Hi-Caliber Towing Service, Inc., by and through their attorneys, Julius W. Lichter and Levin & Gann, P.A., hereby submit their Pre-Trial Memorandum in support of a determination that the Zoning Commissioner is obligated and empowered to act on the Shifren's Petition for Special Hearing, notwithstanding the proceedings in Case No. V93-442-SPH regarding the property known as 12026-28 Park Heights Avenue.

**LINE**

Evan and Cindy Shifren and Hi-Caliber Towing Service, Inc. hereby amend their Petition for Special Hearing to include a request that the Zoning Commissioner of Baltimore County determine that the nonconforming service garage, as a principal use, constitutes a legal nonconforming use pursuant to Sections 104.1 and 405 of the Baltimore County Zoning Regulations and to withdraw their request for a determination of whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the Shifren's Property pursuant to Baltimore County Zoning Regulations Section 405.7E.

As amended, the Shifren's petition the Zoning Commissioner to determine:

1. the existence of a valid nonconforming fuel service station with accessory vehicle repairs pursuant to Baltimore County Zoning Regulations, Sections 101 and 104 where the subject property has been continuously used or intended to be used for the retail sale of automotive fuel;
2. that the nonconforming fuel service station and accessory automobile repair uses have not been abandoned or discontinued pursuant to Baltimore County Zoning Regulations Sections 101 and 405.7; and
3. that the service garage, as a principal use, has not been abandoned or discontinued pursuant to Baltimore County Zoning Regulations Sections 101 and 104.

### INTRODUCTION

Evan and Cindy Shifren (the "Shifren's") are the record title owners of that real property consisting of .75 acres, more or less, known as 12026-28 Park Heights Avenue in Owings Mills (the "Property"). The Property is zoned Resource Conservation 5 ("RC 5"). The Property is comprised of a single-family residential dwelling, a two-bay service garage, a small cashier's station, fuel pump area, parking areas and privacy fencing. An unnamed intermittent stream passes through the rear of the Property. Hi-Caliber Towing Service, Inc. ("Hi-Caliber") is the Lessee of the fuel service station, service garage and parking areas from which the Shifren's, the principals of Hi-Caliber, operate a fuel service station and service garage.<sup>1</sup>

In October 1992, the Shifren's and Hi-Caliber began leasing the Property from N.B.S., Inc. ("NBS"), the legal title owner at that time, and operating the nonconforming fuel service station and nonconforming service garage which have been operated on the Property since at least

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<sup>1</sup> The 1985 edition of the BCZR, as amended, refers to "automotive fuel service station." Pursuant to Bill 172-93, the County Council changed the defined term "automotive fuel service station" to "fuel service station." Similarly, pursuant to Bill 172-93, the term "automotive repair garage" was changed to "service garage." While Bill 172-93 clarified the definitions, for ease of reference and consistency, the terms "fuel service station" and "service garage" are used unless noted otherwise.

the 1930's. By deed dated December 13, 1993 and recorded among the Land Records of Baltimore County in S.M. Liber 10396, folio 427, the Shifren's purchased the Property and took title to the Property from NBS. Since entering the Property in 1992, the business operations on the Property have been continuous.

Pursuant to Section 500.7 of the Baltimore County Zoning Regulations (hereinafter referred to as either "BCZR" or "Regulations"), the Shifren's have petitioned the Zoning Commissioner to confirm the existence of a valid, legal nonconforming fuel service station and nonconforming service garage under BCZR Sections 104.1 and 405.

At a hearing on the Petition for Special Hearing before the Zoning Commissioner on May 22, 1997, Michael D. Vogelstein, Esquire, counsel for certain opponents of the Shifren's Petition,<sup>2</sup> moved to postpone the hearing on the grounds that proper notice of a change in the hearing date had not been sent to all of the interested parties. After argument on the motion, Julius W. Lichter, Esquire agreed that the hearing should be postponed. The Zoning Commissioner granted the motion.

After granting the motion, the Zoning Commissioner raised the question of whether *res judicata* bars a hearing on the Petition for Special Hearing. The Zoning Commissioner suggested that counsel submit pre-trial memoranda to address what, if any, impact the decision of the Circuit Court for Baltimore County in Case No. 95-CV-00176 has on the Petition for Special Hearing. For the reasons stated herein, the Zoning Commissioner has a duty and the power to act on the Petition for Special Hearing ("Petition"), and *res judicata* does not limit the Zoning

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<sup>2</sup> Opponents of the Shifren's Petition for Special Hearing are referred to herein collectively as "Protestants".

Commissioner's power to rule upon the Petition based upon the evidence presented.

### CHRONOLOGY OF TITLE

Due to the number of persons who have owned the Property and operated businesses thereon, a brief summary of the chain of title to the Property may assist in providing a full understanding of the issues presented.

KHK, Inc. ("KHK"), a now-defunct Maryland corporation, took title to the Property from Houston G. Curd, III, *et ux.* by deed dated February 16, 1983 and recorded among the Land Records of Baltimore County in E.H.K. 6715, folio 230. KHK granted a mortgage on the Property to Baltimore Federal Financial, F.S.A. by Mortgage dated May 11, 1984 and recorded among the Land Records of Baltimore County in S.M. Liber 6715, folio 232. On January 26, 1988, Baltimore Federal Financial, F.S.A. assigned the mortgage to Sharon L. Guida by an Assignment of Mortgage which is recorded among the Land Records of Baltimore County in S.M. Liber 7786, folio 700. On February 3, 1988, Sharon L. Guida instituted an action in the Circuit Court for Baltimore County, Case No. 88 CSP 316, to foreclose on the mortgage.

NBS purchased and obtained title to the Property from Sharon L. Guida, Mortgage Assignee, by deed dated June 17, 1988 and recorded among the Land Records of Baltimore County in S.M. 7910, folio 308. On September 23, 1988 Mr. Ron Goodman resumed the historic nonconforming uses of the Property pursuant to a lease agreement with NBS (the "Goodman Lease"). Mr. Goodman resumed the nonconforming uses after confirming with Baltimore County's zoning authorities that the nonconforming uses had not expired. The Goodman Lease ended on December 11, 1989. On or about January 1, 1990, NBS entered into a lease agreement with Mr. Gene Sturgis (the "Sturgis Lease"). Mr. Sturgis continued to operate the nonconforming

uses through June 1992, when the Sturgis Lease ended.

In October 1992, only four (4) months after the Sturgis Lease ended, the Shifren's entered the Property pursuant to a lease agreement with NBS (the "Shifren Lease"). Before entering into their lease, the Shifren's investigated whether the nonconforming fuel service station and service garage had expired. Personally, and through Gary S. Mandel, Esquire, the Shifren's confirmed with Baltimore County's zoning authorities that the nonconforming uses had not expired and that the Shifren's had a right to continue the nonconforming uses. The Shifren's then resumed the historic operation of the Property as a nonconforming fuel service station and service garage four (4) months after the Sturgis Lease ended. The Shifren Lease ended when the Shifren's purchased the Property and took title thereto by deed dated December 13, 1993 and recorded among the Land Records in S.M. Liber 10396, folio 427.

#### THE DOCTRINE OF RES JUDICATA

*Res judicata* is a legal doctrine of limited applicability. When *res judicata* applies, it bars parties from re-litigating issues that have been adjudicated as well as issues which could have been litigated. *Esslinger v. Baltimore City*, 95 Md. App. 607, 627, 622 A.2d 774, 779 (1993).

*Res judicata* applies when three (3) conditions coalesce. The conditions are as follows:

1. that the parties in the present litigation are the same or in privity or with the parties to the earlier dispute,
2. that the claim presented in the current action is identical to the one determined in the prior adjudication, and
3. that there was a valid final judgment on the merits. *Esslinger, supra*, 95 Md. App. 607, 616, 622 A.2d 774, 779.

The Shifren's do not dispute that the parties to the Petition are the same or in privity with the parties to the previous proceedings. However, *res judicata* is not applicable in this case. BCZR § 500.7 empowers the Zoning Commissioner to hear any petition on any nonconforming

use as necessary to ensure the proper enforcement of the Regulations, regardless as to whether the nonconforming use is alleged to have been the subject of previous proceedings. Furthermore, the Shifren's Petition, as amended, presents claims regarding the existence and viability of the nonconforming service garage as a principal use of the Property which were not litigated in previous proceedings and which are not the subject of a valid final judgment on the merits.

**SECTION 500.7 MAKES  
RES JUDICATA INAPPLICABLE TO  
PETITIONS FOR SPECIAL HEARING.**

**THE CLEAR AND UNAMBIGUOUS LANGUAGE OF SECTION 500.7  
EMPOWERS AND REQUIRES THE ZONING COMMISSIONER TO  
ACT ON A PETITION FOR SPECIAL HEARING WHENEVER  
ACTION ON A PETITION WILL ENSURE THE PROPER  
ENFORCEMENT OF THE REGULATIONS.**

Section 500.7 of the Baltimore County Zoning Regulations empowers the Zoning Commissioner to hear and to decide the Shifren's Petition. Section 500.7 states, in pertinent part, as follows:

The said zoning commissioner **shall have the power to hear such other hearings and pass such orders thereon as shall, in his discretion be necessary for the proper enforcement of all zoning regulations. . . .** The power given hereunder shall include the right of any interested person to petition the zoning commissioner . . . **to determine the existence of any purported nonconforming use of any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations. (Emphasis added.)**

The clear and unambiguous language of Section 500.7 states that the Zoning Commissioner shall have the power to determine the existence of **any** purported nonconforming use, regardless of whether previous proceedings on the nonconforming use have been conducted. Section 500.7 also requires that the Zoning Commissioner determine the rights of persons in property insofar as their rights are affected by the Regulations.

The County Council's broad grant of power to the Zoning Commissioner comports with Maryland's appellate courts' decisions which hold that administrative factfinders have considerable discretion in the exercise of the powers delegated by the legislature. In *Department of Natural Resources v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 334 A.2d 514 (1975), the Court of Appeals stated as follows:

Legislation which has to provide for a large number of cases of varied facts, or for unforeseeable conditions present or future, must be supplemented by the action of administrative officers **with power to adapt and vary the rule as the special cases come before them, one by one.** 274 Md. at 219, 334 A.2d at 520, quoting *Goldman v. Crowther*, 147 Md. 282, 128 A. 50 (1925) (Chief Judge Bond, dissenting). (Emphasis added.)

In *Linchester Sand & Gravel*, the Court of Appeals makes clear that the Zoning Commissioner has considerable power to be flexible with regard to applying strict judicial doctrines to administrative proceedings. In accordance with the appellate courts' decisions, the County Council expressly delegated considerable power to the Zoning Commissioner to act on any petition on any purported nonconforming use, regardless of previous decisions regarding the nonconforming use so that *res judicata* does not preclude the Zoning Commissioner from deciding a subsequent Petition for Special Hearing where the proper enforcement of the Regulations depends upon the Zoning Commissioner's action on a petition.

**ACTION BY THE ZONING COMMISSIONER ON THE SHIFREN'S PETITION IS NECESSARY TO ENSURE THE PROPER ENFORCEMENT OF THE REGULATIONS.**

Section 500.7 imposes a duty on the Zoning Commissioner to hear and to decide any petition for special hearing to determine the existence of a nonconforming use when the Zoning Commissioner determines that a hearing on the petition will ensure the **proper** enforcement of the Regulations. Because the Regulations do not define the term "proper", the Regulations require

reference to *Webster's Third International Dictionary of the English Language, Unabridged*. *Webster's* defines "proper" as "marked by suitability, accord, compatibility; sanctioned as according to equity, justice, ethics or rationale." *Webster's* also uses words such as "good" and "praiseworthy" to define "proper". Thus, as long as the Zoning Commissioner determines that hearing a particular petition to determine the existence of a nonconforming use is suitable or compatible with the enforcement of the Regulations according to equity, justice, ethics or rationale, the Zoning Commissioner may hear and decide any petition regardless of whether previous proceedings have been conducted on a particular nonconforming use.

In deciding to act on the Shiftren's Petition to ensure the proper enforcement of the Regulations, the Zoning Commissioner must consider the environmental conditions which exist on the Property as the environmental conditions relate to the health, safety and general welfare of the community. Baltimore County Code Section 26-116 states that the Regulations may be prepared "[f]or the purpose of **promoting health, safety, morals, and general welfare** of the community." (Emphasis added.)

KHK, took title to the Property from Houston G. Curd, III, *et ux.* by deed dated May 11, 1984. Mr. Paul Koch, Mr. James Hammersla and their respective wives formed KHK. KHK operated a fuel service station and service garage on the Property before the nonconforming use status was confirmed in Case No. 85-167-SPH. In response to KHK's Petition for Special Hearing in Case No. 85-167-SPH, the Zoning Commissioner confirmed the existence of the nonconforming fuel service station and service garage on January 22, 1985. KHK held legal title to the Property from May 11, 1984 until their mortgagor, Baltimore Federal Financial, F.S.A., foreclosed on the mortgage in 1988.



The Protestants in Case No. V93-442-SPH called Mr. Hammersla to testify before the County Board of Appeals for Baltimore County ("CBA") regarding the duration of KHK's operation of the nonconforming fuel service station and service garage. Mr. Hammersla misled the CBA by testifying that KHK left the Property in August 1985. Approximately seven (7) months after KHK allegedly left the Property, on March 21, 1986, the Oil Control Program ("OCP") within the Maryland Department of the Environment ("MDE") investigated a complaint regarding fuel leaking on the Property. OCP's Initial Report of Oil Spill indicates that an unknown amount of gasoline leaked from an underground storage tank ("UST") on the Property; that the gasoline had not been contained; that a contractor had not been hired to clean the spill; and that OCP had not determined whether the groundwater or the stream which passes through the rear of the Property had been contaminated by the spill. On April 10, 1986, approximately three (3) weeks after OCP investigated the gasoline leak, an OCP Field Investigation Report indicates that KHK failed to maintain daily records regarding the amount of fuel that was contained in the UST's. Without daily inventory records, neither KHK nor OCP was able to determine the extent to which the UST's were leaking or the amount of gasoline that may have contaminated the Property.

Even before learning that MDE would require the Shifren's to remedy the effects of the spill which occurred long before they entered the Property, the Shifren's, of their own volition and at their sole expense, began a massive effort to improve the Property upon entering the Property pursuant to a lease agreement in October 1992. From the rear of the service garage and along the stream bank, the Shifren's removed over 500 junked automobile tires which had been haphazardly buried for disposal by previous owners and operators of the Property. The Shifren's

also disposed of corrosive car batteries, numerous junked vehicles which may have contained hazardous fluids and other miscellaneous car parts which were scattered throughout the Property. OCP's Report of Observations dated May 20, 1993 describes some of the improvements as follows:

Back of station has been cleaned up all drums and some of the old tanks and items filled with oil have been removed. Stream bank and stream have been cleaned up.

Notably, OCP's Report of Observations was prepared only five (5) months after the Shifren's took title to the Property. The Report indicates the prompt and responsible manner in which the Shifren's undertook their efforts to cure many years of neglect of the Property.

The Shifren's also precision tested the UST's which contained the fuel service station's inventory of fuel to verify the integrity of the tanks. When a precision test revealed the possibility that a tank or tanks might be leaking, MDE ordered that the Shifren's remove the tanks. While the Shifren's complied with MDE's mandate, the Shifren's have continued to register the Property with OCP so that the Shifren's will be able to resume their operation of the nonconforming fuel service station use as soon as the Shifren's replace the UST's. Pursuant to MDE's Underground Storage Upgrade and Replacement Fund Loan Program, the Shifren's also have sought funding through the State's Board of Public Works to assist in reinstalling UST's that comply with all federal, state and local laws and regulations. Funding from the Underground Storage Upgrade and Replacement Fund Loan Program may also be used to offset the costs that the Shifren's will incur in drilling and maintaining groundwater monitoring wells as ordered by OCP. The Shifren's will install the groundwater monitoring wells and replace the UST's so that the Shifren's will continue their use of the fuel service station.

Photographs of the Property reveal the extent of the improvements that the Shifren's have made to the Property. When the Shifren's purchased the Property, the dwelling thereon had no roof; the exterior was dilapidated; and the interior had been destroyed. The testimony of Protestants' witnesses before the CBA demonstrates the extent of the abuse of the Property that occurred before NBS took title in 1988. In glowing contrast, the Property today has been substantially improved since the Shifren's took title only approximately three and one-half (3½) years ago. The Shifren's have paid from their own pockets the enormous financial burden of removing the environmental hazards left by previous owners. To date, the Shifren's expenditures exceed \$150,000. The Shifren's personal investment has resulted in the removal and abatement of potential health and environmental dangers and has improved the appearance of the Property for the benefit of the entire community. Furthermore, except for the possibility of State and corporate assistance, any future expenses involved in continuing environmental cleanup efforts ordered by OCP will fall upon the Shifren's. However, only and only if the Shifren's remain on the Property operating a viable business can they be in a financial position which enables them to continue their remediation efforts and continue the cleanup.

Only by obtaining a decision that the nonconforming uses remain viable will the Shifren's remain financially viable and be able to obtain the funding that is necessary to continue the cleanup. Continuing the nonconforming fuel service station and service garage uses on the Property will enable the Shifren's to continue their personal financial investment in curing the previous abuses of the Property. In addition to their investment, the Shifren's have mortgaged the Property in the amount of \$260,000 to sustain the Shifren's improvement efforts to date. The fuel service station and service garage uses constitute the Shifren's sole and exclusive source of

income by which to fund the continuing environmental remediation. If the Shifren's are unable to continue their business operations, one may expect that the Property will return to the condition which pre-dated the Shifren's acquisition of the Property, such as dilapidated buildings, overgrown with weeds, and without remediation of present conditions. If the Shifren's efforts are not completed, the Property will be left to waste.

The Shifren's cannot complete their efforts without the income that they generate from the operation of the nonconforming uses. No individual or corporate entity would consider purchasing the Property but for the nonconforming uses thereon due to the potential liability for the environmental cleanup of the Property. Only if the nonconforming uses are permitted to continue does any possibility exist that the remediation efforts will be completed and that the public interest in maintaining the Property free of environmental hazards will be fulfilled. Acting on the Shifren's Petition pursuant to Section 500.7 is necessary to ensure the proper enforcement of the Regulations in fulfilling the express purposes thereof.

**THE PROPER ENFORCEMENT OF THE REGULATIONS REQUIRES  
THAT THE ZONING COMMISSIONER ACT ON THE SHIFREN'S  
PETITION DUE TO THE SPECIAL NATURE OF THIS CASE.**

**The Shifren's Will Establish the Continuous  
Operation of the Fuel Service Station and Service  
Garage on the Property from 1985 to 1988.**

Maryland's appellate courts have stated that determinations of whether the right to continue a nonconforming use has terminated depends primarily upon the language of the local zoning ordinance.<sup>3</sup> In Baltimore County, the general provisions which govern nonconforming uses are found in Section 104. Section 104.1 states as follows:

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<sup>3</sup> See *McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 306 A.2d 524 (1973).

[a] nonconforming use may continue except as otherwise specifically provided in these regulations; provided that upon **any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more**, the right to continue or resume such nonconforming use shall terminate. (Emphasis added.)

Under Section 104.1, the right to continue or to resume a particular nonconforming use may terminate upon the happening of any one of three (3) events. First, the change from one nonconforming use to a different use terminates the right to continue or to resume the original nonconforming use. Second, any abandonment of a particular use terminates the right to continue or to resume a particular use. Third, the discontinuance of a particular nonconforming use for a period of one (1) year or more terminates the right to continue or to resume the particular nonconforming use. None of the three (3) conditions existed from the years 1985 to 1988.

On or about October 30, 1984, KHK filed a Petition for Special Hearing to approve and confirm the existence of "the non conforming (sic) use as an automotive service station." On January 22, 1985, the Zoning Commissioner granted KHK's Petition for Special Hearing and confirmed the existence of a nonconforming fuel service station and service garage. The Zoning Commissioner found that KHK's fuel service station and service garage were nonconforming uses because the uses were operated on the Property before the introduction of zoning laws in Baltimore County.

In August 1985, approximately eight (8) months after obtaining the nonconforming use status for the fuel service station and service garage which had been in operation since the 1930's, KHK filed bankruptcy proceedings. While KHK filed for bankruptcy in 1985, Baltimore Federal Financial, F.S.A. did not institute foreclosure proceedings until February 1988. Mr. Hammersla, of KHK, testified on behalf of the Protestants before the CBA in Case No. V93-442-SPH that

KHK left the Property in August 1985. Mr. Hammersla also testified that the Property was not and could not have been operated as a fuel service station and service garage thereafter. Mr. Hammersla's testimony before the CBA suggests that, upon filing bankruptcy in August 1985, KHK left the Property without ever operating the uses or permitting anyone else to operate the uses. Documentary evidence which was unavailable in previous proceedings reveals that, during the period from August 1985 until September 1987 and thereafter, KHK and others continuously operated the uses without abandonment or discontinuance for a period in excess of one (1) year.

The Shifren's have obtained documentary evidence which reveals that the Motor Fuel Tax Unit of the Office of the Comptroller of the Treasury (the "Unit") issued a Certificate of Registration ("Certificate") to KHK. Obtaining a Certificate is a mandatory prerequisite which allows a fuel service station operator to sell and to dispense motor fuel. KHK's Certificate was effective from August 8, 1984 to July 2, 1986, almost one (1) year after Mr. Hammersla's testimony suggests that KHK left the Property. The Certificate provides additional evidence that Mr. Hammersla deliberately mislead the CBA to believe that KHK had abandoned or discontinued the nonconforming uses of the Property when, in fact, the nonconforming uses have never been abandoned or discontinued and were being used by KHK or others with the permission of KHK.

Additionally, the Shifren's will introduce copies of OCP's records to show that KHK operated the Property as a fuel service station after August 1985. OCP's file includes the Initial Report of Oil Spill dated March 21, 1986 discussed *supra*. OCP also issued a Field Investigation Report dated May 6, 1986 stating that an inspector met with Mr. Hammersla and issued a Warning Notice to require that Mr. Hammersla maintain inventory records in accordance with

COMAR. An OCP Field Investigation report and an OCP Memo to File also reveal that an inspector met with an employee of KHK regarding KHK's failure to properly inventory the fuel. Mr. Hammersla misrepresented to the CBA the duration of KHK's use of the Property, as is evidenced by the records of OCP and the Unit in addition to the testimony of witnesses residing proximate to the Property.

Furthermore, the Shifren's have obtained business records of KHK which reveal that KHK conducted activities consistent with the operation of a fuel service station and service garage on the Property as late as September 1987. The fact that KHK operated the nonconforming uses and allowed others to operate the nonconforming uses on the Property throughout period from August 1985 until September 1987 only five (5) months before the institution of foreclosure proceedings and within one (1) year from when the Goodman Lease commenced, will also be supported by the testimony of a number of area property owners and nearby neighbors who will confirm that the Property was operated as a fuel service station and service garage during the years 1985 to 1988.

The Unit's records provide additional evidence that Mr. Hammersla misrepresented the duration of KHK's use of the Property to the CBA. Mr. Hammersla testified before the CBA that, after purportedly leaving the Property in August 1985, KHK did not authorize anyone to operate the nonconforming uses on the Property. However, the Shifren's have obtained documentary evidence from the Comptroller of the Treasury to prove that the Comptroller issued a Certificate to Fred's Body & Frame Shop during the time that KHK held title to the Property and before Baltimore Federal Financial, F.S.A. foreclosed on KHK's mortgage. The Certificate that issued to Fred's Body & Frame Shop was effective from June 12, 1987 to June 30, 1987.

During that time, KHK still held title to the Property. The issuance of a Certificate to Fred's Body & Frame Shop provides evidence that KHK never changed the nonconforming uses nor intended to abandon the Property and that KHK did not discontinue the nonconforming uses for a period in excess of one (1) year such that the nonconforming uses would expire.

Mr. and Mrs. Fred Schwerer, the proprietors of Fred's Body & Frame Shop, will also testify that they operated the nonconforming fuel service station and nonconforming service garage pursuant to an agreement with KHK during the time that KHK held title to the Property and after the time that KHK is alleged to have left the Property. Mr. and Mrs. Schwerer will also prove that Fred's Body & Frame Shop operated the nonconforming service garage use after the effective date of its Certificate.

The Shifren's will not speculate that Mr. Hammersla's motivation to misrepresent the duration of KHK's operation of the Property may be related to the Initial Report of Oil Spill of March 21, 1986 and his potential liability for the environmental effects and the remediation costs thereof. However, the irrefutable evidence will show that Mr. Hammersla misrepresented the duration of KHK's operation of the nonconforming uses and will prove that KHK neither abandoned nor discontinued the nonconforming fuel service station and service garage uses.

**By Operation of Law, the Nonconforming Service  
Garage Became a Principal Use Before the Filing of  
ZADM's Petition for Special Hearing which Initiated  
the Previous Proceedings in Case No. V93-442-SPH.**

In Case No. V93-442-SPH, the CBA determined that the nonconforming fuel service station use had been abandoned at an unspecified time and for an unspecified duration from 1985 to 1988. Abandonment of a nonconforming use requires an intent to quit the user in addition to



an overt act which is consistent with that intent. In *McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 306 A.2d 524 (1973), the Court of Appeals determined that

**abandonment involves the concurrence of an intent to relinquish and an overt act which is consonant with that intent, and that cessation or discontinuance without the substitution of another use or without evidence of an intent to abandon, will not prevent the resumption of a nonconforming use.** 269 Md. at 469, 306 A.2d at 293. (citing *Landay v. Zoning Appeals*, 173 Md. 460, [*Landay v. MacWilliams*], 196 A. 293 (1938).) (Emphasis added.)

The Shifren's will prove that, if KHK ever abandoned the nonconforming uses, said abandonment did not and could not have occurred before September 1987.

Mr. Hammersla testified before the CBA in Case No. V93-442-SPH that KHK operated the nonconforming uses on the Property until August 1985. Copies of records from OCP's files provide evidence of KHK's intent to continue the nonconforming uses after August 1985. In May 1986, OCP cited KHK for failing to maintain its inventory records which indicates that KHK intended to, and did, continue to operate the nonconforming fuel service station and service garage after August 1985. KHK could not have intended to abandon the nonconforming uses while continuing to operate them. Furthermore, the Unit's records indicate that KHK intended to continue its operation of the nonconforming uses by showing that KHK maintained its Certificate through July 1986. KHK would not maintain the Certificate, which is required to sell and dispense gasoline, if KHK did not intend to continue the nonconforming uses.

KHK also evidenced its intent to continue the nonconforming uses by contracting with Fred's Body & Frame Shop to conduct the nonconforming fuel service station and service garage uses within one (1) year from July 1986. In June 1987, less than one (1) year after the expiration of KHK's Certificate, KHK entered into an agreement with Fred's Body & Frame Shop to operate the nonconforming fuel service station and service garage on the Property. The Unit's records

will prove that Fred's Body & Frame Shop obtained a Certificate in order to sell and dispense fuel through the end of June 1987. Mr. and Mrs. Schwerer will also testify before the Zoning Commissioner that they maintained inventories of fuel and operated the nonconforming service garage through September 1987 such that any abandonment of the nonconforming fuel service station could not have occurred before October 1987.

Throughout the time from August 1985 to September 1987, KHK and Fred's Body & Frame Shop intended to continue and did continue the nonconforming fuel service station and service garage uses on the Property before any abandonment may have occurred. The testimony of Mr. and Mrs. Schwerer, in addition to the testimony of property owners in the area, will reveal that, while both nonconforming uses were continuously operated, the nonconforming service garage use was intensified to such an extent that it constituted a principal use of the Property. Additional testimony from area property owners will also support the documentary evidence which proves that the nonconforming fuel service station could not have been abandoned before September 1987 and that the nonconforming service garage use was intensified during KHK's ownership of the Property such that the nonconforming service garage constituted a principal use on the Property.

The Regulations permit the intensification of, as opposed to the expansion of, nonconforming uses. In 1985, the BCZR recognized the fuel service station use as a use which was separate and distinct from the service garage use. BCZR § 101 (1985 ed.). The recognition of the service garage use as separate and distinct from the fuel service station use continues to be recognized under the BCZR today. BCZR § 101. Under the Regulations that were in effect in 1985, the service garage use was considered as ancillary, or accessory, to the fuel service

station use. BCZR § 405.4C.1 (1985 ed.). In 1985, the Regulations permitted the intensification of uses that were ancillary to fuel service stations by mandating that uses "of such a nature or extent to be permitted" as a use in combination with a fuel service station be considered as principal uses. BCZR § 101 (1985 ed.). In this case, as the documentary and testimonial evidence discussed *supra* will prove, the nonconforming service garage was of such an extent that it constituted a principal use before any abandonment could have occurred after the cessation of Fred's Body & Frame Shop in September 1987.

That the nonconforming service garage constituted a principal use is also evidenced by the passage of Bill 172-93 (the "Bill"). Pursuant to the Bill, the County Council repealed and amended the fuel service station regulations which were in effect in 1985. ZADM filed its Petition for Special Hearing alleging that the Shifrens' nonconforming fuel service station and "accessory" service garage use had been abandoned or discontinued on or about June 22, 1993. Bill 172-93 was enacted on January 27, 1994 and became effective on or about March 13, 1994, approximately nine (9) months before the CBA issued its Opinion on December 9, 1994 that the nonconforming fuel service station was abandoned and approximately one (1) year and nine (9) months before the Circuit Court issued its decision to affirm the CBA on December 28, 1995.

The Bill effected a procedural change in Sections 405.4D and E by clarifying those uses which are to be considered as ancillary to and those uses which are to be considered principal uses as uses in combination with fuel service stations. Section 405.4D, as amended, states that minor vehicle repair uses, except those which have a state motor vehicle administration transporter or dealer license, are permitted as ancillary uses. Because both major and minor vehicle repairs have been conducted on the Property since 1985 and because the Shifren's have

a transporter license, the Shifren's nonconforming service garage could not be considered as an accessory use at the time the CBA and the Circuit Court acted on ZADM's Petition. Section 405.4E, as amended, states that service garages such as the Shifren's, which are excepted from Section 405.4D shall be considered as principal uses. Thus, before the nonconforming fuel service station could have been abandoned and before the final adjudication of the Circuit Court in Case No. V93-442-SPH, the nonconforming service garage use on the Property constituted a principal use such that the right to continue the nonconforming service garage use existed independently of the right to continue the nonconforming fuel service station.

That the nonconforming fuel service station use could be intensified to such a nature and extent that it constituted a principal use is also in accord with Maryland's case law. In *McKemy v. Baltimore County*, 39 Md. App. 257, 385 A.2d 96 (1978), the Court of Special Appeals examined whether the use of residential lots for parking by a trucking facility constituted a lawful nonconforming use in light of the use of the lots for parking before the introduction of zoning laws in Baltimore County. After determining that the residential lots had been used by a restaurant for parking trucks and other vehicles, the Court examined whether the parking of fuel oil and freight trucks constituted a "permissible intensification of the use or an actual change" of the nonconforming use. 39 Md. App. at 269, 385 A.2d at 103.

The *McKemy* Court determined that four (4) factors must be considered in deciding whether a nonconforming use has been lawfully intensified. The factors are as follows:

1. to what extent does the current use of [the] lots reflect the nature and purpose of the original nonconforming use;
2. is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;
3. does the current use have a substantially different effect on the

- neighborhood; [and]
4. is the current use a "drastic enlargement or extension of the original nonconforming use. 39 Md. App. at 269-70, 385 A.2d at 103-04. (Citations omitted.)

The continuing use of the Property and the nonconforming uses thereon are clearly within the scope of the nonconforming uses as confirmed by the Zoning Commissioner in 1985. The Zoning Commissioner confirmed the existence of a nonconforming fuel service station and service garage. The Zoning Commissioner authorized overnight parking for one (1) vehicle in each of the two (2) service bays of the service garage in addition to parking for nine (9) vehicles in the parking area along Park Heights Avenue and parking for six (6) vehicles between the garage and the dwelling. The Zoning Commissioner required that KHK enclose the area between the dwelling and the service garage with stockade fencing that was installed and that is maintained by the Shifren's. The Shifren's comply with the parking that was permitted by the Zoning Commissioner in 1985 and conduct their business operations in accordance with the Zoning Commissioner's order. The Zoning Commissioner also required KHK to plant a thick row of trees along the rear property line. The rear of the Property remains heavily wooded today, and the Shifren's have improved the rear of the Property and the stream as noted *supra*.

Finally, the Zoning Commissioner prohibited any expansion of the nonconforming uses. The Shifren's will present a plat of the Property as it appeared in 1985 that may be compared to the plat that the Shifren's submitted in support of their Petition to prove that the nonconforming uses have not been expanded beyond that permitted by the Zoning Commissioner's grant of nonconforming uses in 1985. The plat, in addition to photographs of the Property as it appears today and in addition to the testimony of area property owners will prove that the Shifren's operations of the nonconforming fuel service station and service garage uses, while more intense

than that which was granted in 1985, accurately reflect the nature and purpose of the original nonconforming uses.

The letters that certain Protestants have written to the Zoning Commissioner suggest that the Shifren's operation of the nonconforming uses has an adverse effect on the neighborhood. However, the effects of the Shifren's nonconforming uses are relevant under *McKemy* only insofar as the nonconforming uses have a substantially different effect on the neighborhood than that which attended the nonconforming uses in 1985. The evidence before the Zoning Commissioner will clearly show that the Shifren's operate the same nonconforming uses in the same manner as permitted in 1985. Parking does not exceed that permitted; vehicles to be repaired are stored to the rear of the Property behind stockade fencing; and the Shifren's are considerate to conduct repair activities behind the closed doors of the service garage.

If a final adjudication exists with regard to the nonconforming uses on the Property, that adjudication determined only that the nonconforming fuel service station was abandoned at an unspecified time from August 1985 to February 1988. The evidence before the Zoning Commissioner will show that KHK operated the nonconforming uses and leased the Property to Fred's Body & Frame Shop to operate the nonconforming uses until September 1987. Thus, if any abandonment occurred, it occurred after September 1987. Before September 1987, the nonconforming service garage constituted a principal use on the Property. The evidence and testimony before the Zoning Commissioner will show that the nonconforming service garage was permissibly intensified before September 1987. Additionally, by operation of the procedural changes within Bill 172-93 before the date of the CBA's and the Circuit Court's decisions in Case No. V93-442-SPH, the Regulations required that the nonconforming service garage be considered

as a principal use. Because the nonconforming service garage constitutes a principal use, the right to continue the nonconforming service garage use exists independently of the right to continue the nonconforming fuel service station and survives today.

**The Shifren's Will Establish that the Nonconforming  
Uses Remain Valid from 1988 To Date.**

When the temporary and involuntary cessation of a nonconforming use results from circumstances which are beyond the control of the nonconforming user, the Court of Appeals has noted a distinction between such an involuntary cessation and an abandonment or a discontinuance. In *McLay v. Maryland Assemblies, Inc., supra*, the Court held that a nonconforming ammunition components manufacturing use remained viable where the manufacturer released all but one employee, ceased all manufacturing operations for approximately two (2) years, and allowed its license with the Fire Marshall to expire because of a lack of orders from the United States Navy.

The *McLay* Court determined that abandonment does not occur unless there is an intent to abandon with the concurrence of an overt act which is consonant with that intent. 269 Md. at 469, 306 A.2d 293. Unlike abandonment, discontinuance means a "**voluntary cessation of user without an intent to abandon.**" 269 Md. at 470, 306 A.2d 527. (Emphasis added.) Neither KHK nor any other owner or operator since has discontinued the nonconforming uses for a period in excess of one year. The evidence discussed *supra* will show that KHK never discontinued the operation of the nonconforming uses for a period in excess of one year.

After KHK left the Property, NBS took title to the Property by deed dated June 17, 1988 and recorded among the Land Records of Baltimore County in S.M. Liber 7910, folio 308 from Sharon Guida, Mortgage Assignee in a foreclosure sale. Sharon Guida held the Property by

virtue of an Assignment of Mortgage in foreclosure proceedings on behalf of Baltimore Federal Financial, F.S.A., which Assignment is dated January 26, 1988 and is recorded among the Land Records of Baltimore County in S.M. Liber 7786, folio 700.

The business records of NBS show that it leased the Property to three (3) persons, each of whom operated a fuel service station and service garage on the Property. NBS first leased the Property for operation as a fuel service station and service garage to Mr. Ron Goodman, Jr. The Goodman Lease commenced on September 23, 1988, after Baltimore County's zoning authorities advised Mr. Goodman that the right to continue the nonconforming uses remained valid, and terminated on December 11, 1989.

On January 1, 1990, only weeks after the Goodman Lease ended, the business records of NBS indicate that NBS entered into the Sturgis Lease, which terminated on June 26, 1992. The Shifren's will prove that, during the term of the Goodman Lease and the Sturgis Lease, the Property was in continuous operation as a nonconforming fuel service station and service garage. In October 1992, only approximately four (4) months after the Sturgis Lease ended, NBS entered into the Shifren Lease.

The Shifren Lease then began in October 1992, only four (4) months after the Sturgis Lease ended. The Shifren Lease ended when the Shifren's purchased the Property from NBS in December 1993. Before purchasing the Property, the Shifren's, individually and through Gary S. Mandel, Esquire, their attorney at that time, conducted investigations into the operation of the Property and the title thereto. In speaking with officials in Baltimore County's zoning office, the Shifren's were advised that a nonconforming use had been granted to permit the operation of the property as a fuel service station and service garage and that the nonconforming use was valid



in December 1993.

From October 1992 to date, the Shifren's operation of the Property as a nonconforming fuel service station and service garage has been continuous. However, on July 19, 1994, pursuant to direction from OCP, the Shifren's removed two (2) UST's. Similarly, on March 15, 1996, pursuant to direction from OCP, the Shifren's removed the remaining three (3) UST's with the intention of replacing the tanks with improved tanks that satisfy all federal, state and local regulations.

Although BCZR Section 405.7B establishes a rebuttable presumption of abandonment whenever a fuel service station is not in actual and continuous operation<sup>4</sup> for a period of twelve (12) months, the Shifren's will present evidence to rebut the presumption and to establish that they have neither abandoned nor discontinued their operation of the fuel service station. In *McLay*, the Court determined that abandonment requires an intent to relinquish the use in addition to an overt act which is consonant with that intent. The presumption codified in Section 405.7B provides that the failure to conduct actual and continuous operations for a period of twelve (12) months is consonant with an intent to terminate the nonconforming use. However, the holdings of Maryland's Courts of Appeals in accordance with *McClay* require that an intent to abandon accompany the failure to act be established before finding that an abandonment has occurred.

The Shifren's have evidenced their intent to continue the nonconforming fuel service station operations notwithstanding the removal of the UST's. Since removing the UST's at MDE's

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<sup>4</sup> BCZR Section 405.7B defines "actual and continuous operation" as operation a fuel service station for at least eight hours per day, five days per week.

direction, the Shifren's have maintained their UST registration with MDE so that the Shifren's will be able to resume their fuel service station operations as soon as the UST's are replaced. The Shifren's also are proceeding to obtain financial assistance from the State and private sponsors to replace the UST's and fuel pumps. The Shifren's will provide the Zoning Commissioner with documents which show that the Shifren's have maintained the registration of their UST's with MDE and that the Shifren's are actively seeking financial assistance to re-install the UST's. Furthermore, the Shifren's will testify that they have never intended to abandon the nonconforming fuel service station use. The trouble and expense of pursuing their Petition also evidences the Shifren's intent to continue the fuel service station. The Shifren's ability to obtain financial assistance and to continue their private remediation efforts is tied directly to the Shifren's success in this case. As noted herein, the Shifren's remediation efforts to date will fail, and the Property will be left to waste if the Shifren's are unable to continue their operation of the nonconforming uses in accordance with the historical and continuous use of the Property.

With regard to whether the Shifren's cessation of the fuel service station use constitutes a discontinuance of the use, the Shifren's case is similar to *McLay* in that the cessation in both cases is involuntary and temporary. Like the nonconforming use holder in *McLay*, the Shifren's maintain the Property in a state of readiness so that, once the involuntary cessation is cured, the Shifren's will be able to resume the nonconforming fuel service station use. Unlike *McLay*, however, the Shifren's temporary and involuntary cessation is not the result of a lack of business which is typical of ordinary business cycles. In the Shifren's case, OCP ordered that the Shifren's UST's be removed, and the Shifren's were required by law to comply with OCP's order. As in *McLay*, the Shifren's continue to staff their business and continue to seek means by which to

replace the UST's. The Shifren's temporary and involuntary cessation of the nonconforming fuel service station does not constitute a discontinuance of the nonconforming fuel service station where the Shifren's continue to register their UST's with OCP; where the Shifren's continue to staff the use; and where the Shifren's are actively pursuing means by which to replace the UST's. A favorable decision in this case will verify the continuance of the uses. The action of a few area residents should not be allowed to deprive the property rights of the Shifren's and frustrate the purposes of the applicable law.

**THE PROCEEDINGS BEFORE THE CBA IN  
CASE NO. V-93-442-SPH WERE FLAWED BY  
IRREGULARITIES SO THAT RES JUDICATA DOES NOT  
APPLY TO THE SHIFREN'S PETITION.**

The Regulations require that hearings before the CBA on appeals from decisions of the Zoning Commissioner shall be conducted *de novo*. In *Monkton Preservation Association v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 578, 669 A.2d 195, 197 (1996), the Court of Special Appeals noted that a "true trial *de novo*, of course, puts all parties back at 'square one' to begin again as if the adjudication appealed from had never occurred." (Citation omitted.) To put the Shifren's back at "square one" would be to have ZADM charging the Shifren's with a violation of the Regulations and to require ZADM or the Protestants to substantiate the charges so that the Shifren's could adequately defend themselves.

Neither ZADM nor the Protestants, as Petitioners/Appellants, were required to prove their case as is consistent with a *de novo* hearing. Instead, over the objection of Shifren's counsel, Gary S. Mandel, Esquire, the Shifren's were required to present their case in defense of ZADM's charges before the Petitioners established the basis for their claims. The Shifren's were unfairly prejudiced by the proceedings before the CBA when the Shifren's were required to present their

defense before hearing the testimony of witnesses whose testimony supported the Petitioners' claim and whose testimony had not been heard before the Deputy Zoning Commissioner.

Baltimore County's Office of Zoning Administration ("ZADM") charged the Shifren's with violating the Regulations. ZADM filed a Petition for Special Hearing with regard to the Shifren's use. ZADM's petition describes the "nature of the violation(s)" as follows:

Whether there does exist abandonment or discontinuance of a nonconforming automotive service station with accessory vehicle repair service, as previously granted in Special Hearing 85-167-SPH on January 22, 1985.

The Shifren's prevailed before the Deputy Zoning Commissioner who determined that the nonconforming fuel service station and nonconforming service garage uses were never abandoned or discontinued. The Protestants appealed the Deputy Zoning Commissioner's decision.

On appeal to the CBA, the Protestants presented witnesses who did not appear before the Deputy Zoning Commissioner. The new witnesses included Mr. Hammersla, on whose misrepresentations, as described *supra*, the CBA appears to have relied. Mr. Goodman, who leased the Property from NBS from September 1988 to December 1989, also testified before the CBA, although he did not testify before the Deputy Zoning Commissioner.

Mr. Goodman testified that, before entering into his lease with NBS, he had been familiar with the Property. Mr. Goodman also stated that he had been interested in purchasing the Property in the foreclosure proceedings so that he could conduct the nonconforming fuel service station and service garage business on the Property. Mr. Goodman's testimony reveals that he conducted an investigation of the Property to ensure that he could operate the nonconforming uses thereon. According to Mr. Goodman's testimony, his investigation included a conversation with Baltimore County's zoning authorities to ensure that the right to continue the nonconforming

uses had not expired. Mr. Goodman stated that Baltimore County's zoning authorities advised him that the nonconforming uses had not terminated and were valid as of 1988. Mr. Goodman testified that, following his investigation, he obtained a trader's license to conduct the nonconforming uses on the Property and that he did, in fact, operate the nonconforming uses from September 1988 to December 1989.

In direct contradiction to Mr. Goodman's testimony before the CBA in Case No. V93-442-SPH that prior to September 1988 the nonconforming uses remained viable, Mr. Goodman testified that the Property had been abandoned at some unspecified time during 1985 to 1988. Additionally, Mr. Bud Runkles, Vice President of NBS, testified that Mr. Goodman offered to testify on the Shifren's behalf in exchange for the return of a \$550 security deposit which Mr. Goodman alleged to be wrongfully withheld by NBS. Mr. Goodman's testimony is suspect at best insofar as the CBA relied on his testimony in its determination that the nonconforming uses had been abandoned.

The procedural irregularities in the conduct of the CBA's hearing and the false, misleading and contradictory testimony of Mr. Hammersla and Mr. Goodman constitute irregularities which justify the Zoning Commissioner's use of his extensive powers under Section 500.7 and to fulfill the obligation to act on Petitions for Special Hearing.

**RES JUDICATA DOES NOT PRECLUDE THE**  
**ZONING COMMISSIONER FROM ACTING ON THE**  
**SHIFREN'S PETITION WHERE THE PETITION PRESENTS**  
**CLAIMS WHICH ARE DIFFERENT THAN THE**  
**CLAIMS ADJUDICATED IN CASE NO. V-93-442-SPH.**

In *Esslinger v. Baltimore City*, *supra*, the Court of Special Appeals conducted a detailed examination of the doctrine of *res judicata* as it applies to zoning issues. In addition to setting

forth the conditions which must coexist in order for *res judicata* to apply, the Court applied a "transaction" test to determine whether the claim in a particular zoning proceeding is identical to the claim in a prior zoning proceeding.

The *Esslinger* Court outlined the transaction test as follows:

1. When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see [Restatement (Second) of Judgments] §§ 18, 19), the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
2. What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage. 95 Md. App. at 618,22 A.2d at 780-81.

In *Esslinger*, Mr. Esslinger unsuccessfully requested approval from Baltimore City's Board of Municipal and Zoning Appeals ("BMZA") on three (3) separate occasions for a conditional use to permit the erection of a free-standing satellite dish. BMZA denied each of Mr. Esslinger's requests. Mr. Esslinger's fourth (4) claim, in which he sought approval for the same satellite dish in the same location and injunctive and declaratory relief from various employees and departments of Baltimore City and money damages under 42 U.S.C. § 1983, was filed in the United States District Court for the District of Maryland. The U.S. District Court dismissed the complaint on grounds of abstention. Finally, Mr. Esslinger instituted a fifth action in the Circuit Court of Baltimore City which was identical to the suit that the District Court dismissed. The Court of Special Appeals determined that *res judicata* did not bar Mr. Esslinger's civil rights action for money damages.

In *Esslinger*, the plaintiff's fifth action sought approval for the same relief, i.e., approval of a conditional use to permit the same satellite dish on the same property in addition to his claim for money damages for alleged violations of his civil rights. Furthermore, in each of the previous four (4) actions, Mr. Esslinger was the moving party who sought BMZA's approval. The only differences between the fifth action and the previous actions were "small differences in the posture of the zoning request, [which] do not preclude the application of *res judicata*." 95 Md. App. at 618-19, 622 A.2d at 780.

Unlike *Esslinger*, the Shifren's Petition, as amended, seeks relief which is different than that sought in the previous proceedings which were instituted by ZADM and appealed to the CBA by the Protestants. In the Petition, the Shifren's seek a determination of their right to continue the nonconforming fuel service station in light of the Zoning Commissioner's broad powers pursuant to Section 500.7. The Shifren's also seek confirmation of the Shifren's right to continue the principal nonconforming service garage use which is different than the fuel service station; which existed at the time of the proceedings in Case No. V93-442-SPH and which remains today.

The nonconforming service garage constituted a principal use before the fuel service station could have been abandoned and before the final adjudication in Case No. V93-442-SPH. ZADM and the Protestants in the previous action, as the movants therein, had a full opportunity to litigate a claim that the Shifren's right to continue the service garage as a principal use had expired, but the movants failed to raise such a claim. The Shifren's, as respondents to ZADM's petition and to the Protestants' appeal, were not compelled to raise their claims regarding the service garage as a principal use in defense of the charges. The Regulations do not provide for

any mandatory defenses or counterclaims to charges of the abandonment or discontinuance of a nonconforming use. In fact, BCZR Section 500.7 expressly states that any person, including the respondent to charges of abandonment or discontinuance, may file a Petition for Special Hearing to protect his rights in continuing any nonconforming use on any property. The movants in the previous proceedings failed to raise a claim that the right to continue the principal nonconforming service garage use expired from the years 1985 to 1988. Therefore, *res judicata* bars the Protestants to the Petition from raising a claim that the nonconforming service garage as a principal use was abandoned or discontinued from the years 1985 to 1988. Insofar as the previous proceedings did not adjudicate the right to continue the nonconforming fuel service station in light of Section 500.7 and the right to continue the nonconforming service garage as a principal use, *res judicata* does not bar a hearing on the Shifren's Petition.

### CONCLUSION

*Res judicata* applies in limited circumstances. *Res judicata* does not apply in this case because the County Council, by enacting Section 500.7, has expressly stated that the Zoning Commissioner shall act on any petition on any nonconforming use, regardless of whether the nonconforming use was the subject of previous proceedings where action is required to ensure the proper enforcement of the Regulations. Additionally, the Shifren's Petition presents claims regarding the right to continue the nonconforming service garage as a principal use which are different than that claim which may have been addressed by the Circuit Court in response to ZADM's petition and the appeals thereof in Case No. V93-442-SPH. *Res judicata* does not preclude the Zoning Commissioner from hearing and deciding the Shifren's Petition.

Section 500.7 imposes a duty upon the Zoning Commissioner a duty to ensure the proper



enforcement of the Regulations and grants the Zoning Commissioner considerable power fulfill that duty. Section 500.7 enables the Zoning Commissioner to hear any case in which a hearing is necessary for the proper enforcement of the Regulations.

The Court of Appeals has also determined that the rigid rules of court may be adapted and varied by the Zoning Commissioner when special cases arise. This is a special case, and only by hearing the Shifren's Petition and by finding, in accordance with the substantial weight of documentary and testimony evidence, that the nonconforming fuel service station and the nonconforming service garage have never been abandoned or discontinued will the Zoning Commissioner ensure the proper enforcement of the Regulations and promote the health, safety and general welfare of the community.

The Shifren's will prove, with evidence which was not previously available, that the nonconforming uses have never terminated as a result of their abandonment or discontinuance. KHK operated and allowed others to operate the nonconforming fuel service station and service garage uses until September 1987. Except for a period of less than one (1) year and one (1) day between September 1987 and September 1988, when Mr. Goodman, after confirming the viability of the nonconforming uses with Baltimore County's zoning authorities, resumed the nonconforming uses on the Property. The Shifren's personally, and through Gary S. Mandel, Esquire, also confirmed with Baltimore County's zoning authorities that the nonconforming uses had not expired before entering the Property in October.

The Shifren's case is also special in that irregularities in the previous proceedings effected a grave injustice which is entirely inconsistent with the proper enforcement of the Regulations. The Regulations require that appeals to the CBA shall be conducted *de novo*. Instead of putting

the Shifren's back at square one, the Shifren's were required to present their defense before either ZADM or the Protestants presented their case on their claims of abandonment. Furthermore, the Shifren's can show that the testimony of witnesses who appeared for the first time before the CBA deliberately mislead the CBA regarding the extent and duration of the nonconforming use of the Property.

To allow Baltimore County's zoning authorities to petition for special hearings on any established nonconforming use and to require that the property owner establish, re-establish and defend the viability of the nonconforming use against charges that the use had been abandoned between five (5) and eight (8) years prior to the filing of the County's Petition cannot, under any reasonable interpretation of the term, be considered proper.

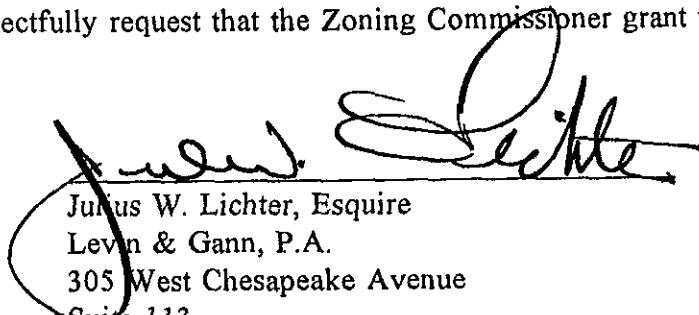
The Shifren's have done more than any prior owner to investigate and to remedy potentially dangerous environmental conditions. Only if the Shifren's obtain a favorable decision that allows them to continue the nonconforming uses on the Property, however, can the Shifren's cleanup efforts be continued. The Shifren's have restored and maintained the improvements on the Property in a condition which complements the community. If the Shifren's are unable to conduct reasonable business operations pursuant to the historical and continuous nonconforming use of the Property, the Property will be left to waste without any reasonable expectation that improvements will be completed or that the Property will be maintained to a degree which promotes the health, safety and general welfare of the community.

A few members of the community have blindly and zealously pursued the demise of every previous owner and operator of the Property. These few, but vocal, members of the community fail to recognize the existence and the value of the historical small business establishment whose

existence in the community predates the existence of new, so-called upscale planned communities. By focusing so intently on the failure of previous owners and operators to care for the Property, these few people, if successful, will create exactly those conditions of neglect that they claim as the inspiration for their efforts.

The Shifren's efforts to improve the Property and to provide valuable services within their community, like the Property itself, will be wasted unless the Zoning Commissioner acts, in accordance with the Regulations and the law of Maryland, on the Petition. Section 500.7 obligates the Zoning Commissioner to act on **any** Petition for Special Hearing on **any purported nonconforming use** where the proper enforcement of the Regulations requires action; while *res judicata* applies in judicial proceedings under limited circumstances, its application is further limited in administrative hearings.

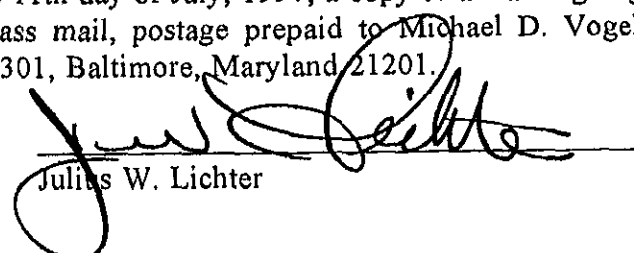
For the reasons stated herein, *res judicata* is inapplicable to the Shifren's Petition for Special Hearing, and the Shifren's respectfully request that the Zoning Commissioner grant the relief requested.



Julius W. Lichter, Esquire  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of July, 1997, a copy of the foregoing Pre-Trial Memorandum was sent by first-class mail, postage prepaid to Michael D. Vogelstein, Esquire, 201 North Charles Street, Suite 301, Baltimore, Maryland 21201.



Julius W. Lichter

RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
12026-28 Park Heights Ave, W/S Park Heights \* ZONING COMMISSIONER  
Avenue, 1650'+/- S of c/l Walnut Avenue \*  
4th Election District, 3rd Councilmanic \* OF BALTIMORE COUNTY  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.  
Petitioner \* CASE NO. 97-303-SPH

\* \* \* \* \*

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 1997, a copy of the foregoing Entry of Appearance was mailed to Julius W. Lichter, Esq., Levin & Gann, 305 W. Chesapeake Avenue, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

MICROFILMED



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at

12026-28 Park Heights Avenue

97-303-5PH

which is presently zoned

RC 5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:

Hi-Caliber Towing, Inc.  
(Type or Print Name)

Signature  
Evan M. Shifren

12026-28 Park Heights Avenue

Address

Owings Mills, MD 21117  
City State Zipcode

Attorney for Petitioner: Levin & Gann, P.A.

Julius W. Lichter

(Type or Print Name)

Signature

305 W. Chesapeake Ave. 410-321-0600

Address Phone No.

Towson, MD 21204  
City State Zipcode

DROP-OFF  
No REVIEW



1/21/97 ucr

Zoning Administration

Development Management

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Evan M. Shifren

(Type or Print Name)

Signature

Evan M. Shifren

(Type or Print Name)

Signature

12026-28 Park Heights Ave. 410-833-2886

Address Phone No.

Owings Mills, MD 21117

City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Name

Address

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE

MICROFILMED

**PETITION FOR SPECIAL HEARING  
12026-28 PARK HEIGHTS AVENUE  
PAGE 2**

97-303-SPH

1. the existence of a valid nonconforming fuel service station with accessory vehicle repairs pursuant to Baltimore County Zoning Regulations, Sections 101 and 104 where the subject property has been continuously used or intended to be used for the retail sale of automotive fuel;
2. to determine whether the nonconforming fuel service station and accessory automobile repair uses have been abandoned pursuant to Baltimore County Zoning Regulations Sections 101 and 405.7; and
3. to determine whether Baltimore County has followed the administrative procedures by which to require the cessation of business activities at the subject property pursuant to Baltimore County Zoning Regulations Section 405.7E

MICROFILMED

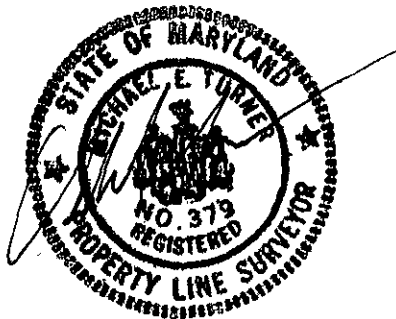
**DESCRIPTION OF THE LANDS OF EVAN SHIFREN, ETAL, KNOWN AS 12026  
PARK HEIGHTS AVENUE, BALTIMORE COUNTY, MARYLAND**

BEGINNING at a steel pin found on the West side of Park Heights Avenue, on the Easternmost outline of the lands of Timothy J. Carrion, Etux; see Deed Liber 8074 at Folio 217, said point being located 1650 feet more or less South from the center of Walnut Avenue, thence, leaving the Carrion lands, and running along the bed of Park Heights Avenue the 2 following courses and distances.

1. South 10 degrees, 16 minutes, 50 seconds East 175.90 feet to a spike found and thence;
2. South 80 degrees, 32 minutes, 17 seconds West, 21.89 feet to a spike found on the West right-of-way line of Park Heights Avenue, thence, running along the West right-of-way line of Park Heights Avenue.
3. South 09 degrees, 27 minutes, 43 seconds East 200.00 feet to a point on the North outline of the lands of Janet Lee Troth, see Deed Liber 6843 at Folio 315, thence, leaving Park Heights Avenue, and binding on the Trott Lands.
4. South 81 degrees, 49 minutes, 26 seconds, West 173.74 feet to the Southeast corner of the aforesaid Carrion Lands, and also the East corner of lands of Baltimore County, Maryland, thence, binding on the Carrion Lands.
5. North 17 degrees, 58 minutes, 10 seconds East 419.11 feet to the place of beginning.

Contained in all 0.75 acres of land more or less, as shown on a location plat prepared by Al Snyder, dated May 8, 1984. This description is subject to a title search, and a boundary survey.

g:\1771\wp\shifren.des



MICROFILMED

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #97-303-SPH  
(Rem 303)  
12026-28 Park Heights Avenue

W/S Park Heights Avenue,  
1650' +/- S of ex Walnut Avenue

4th Election District  
3rd Councilmanic

Legal Owner(s):

Evan M. Shifren

Contract Purchaser:

Hi-Caliber Towing, Inc.

**Special Hearing:** to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

**Hearing:** Tuesday, February 25, 1997 at 2:00 p.m. in Rm. 106, County Office Building.

LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3363.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.

2/071 Feb. 6

C117745

**CERTIFICATE OF PUBLICATION**

TOWSON, MD.,

Feb 6, 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Feb 6, 1997.

**THE JEFFERSONIAN,**

*A. Henickson*

**LEGAL AD. - TOWSON**

Publisher

MICROFILMED



Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than \_\_\_\_\_.

Format for Sign Printing, Black Letters on White Background:

ITEM 303

## ZONING NOTICE

Case No.: 97-303-SPH

A PUBLIC HEARING WILL BE HELD BY  
THE ZONING COMMISSIONER  
IN TOWSON, MD

PLACE: \_\_\_\_\_

DATE AND TIME: \_\_\_\_\_

REQUEST: SPECIAL HEARING TO APPROVE A VALID NON-  
CONFORMING FUEL SERVICE STATION WITH ACCESSORY  
VEHICLE REPAIRS; TO DETERMINE WHETHER THE FUEL  
SERVICE STATION USES HAVE BEEN ABANDONED;  
AND TO DETERMINE WHETHER BALTIMORE

(OVER) →

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.  
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

# CERTIFICATE OF POSTING

RE: Case No.: 97-303 SPH

Petitioner/Developer: EVAN SHIFREN, ETAL

C/O JULIUS LICHTER, ESQ

Date of Hearing/Closing: 2/25/97

Baltimore County Department of  
Permits and Development Management  
County Office Building, Room 111  
111 West Chesapeake Avenue  
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law  
were posted conspicuously on the property located at #12026 - 28

PARK HEIGHTS AVE.

The sign(s) were posted on

2/7/97  
(Month, Day, Year)

Sincerely,

Patrick M. O'Keefe 2/7/97  
(Signature of Sign Poster and Date)

Patrick M. O'Keefe

(Printed Name)

523 Penny Lane

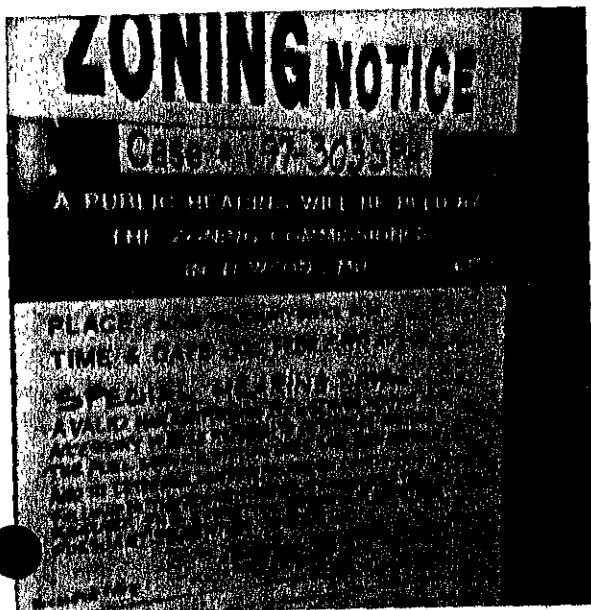
(Address)

Hunt Valley, MD 21030

(City, State, Zip Code)

(410) 666-5366

Pager (410) 646-8354  
(Telephone Number)



97-303 SPH  
#12026 - 28 PARK HEIGHTS AV.  
C/O JULIUS LICHTER, ESQ

MICROFILMED

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No.

028520

DROP-OFF

0 REVIEW

ITEM #303

DATE 1/22/97 ACCOUNT 001-6150

AMOUNT \$ 250.00 (WCR)

RECEIVED Levin & Gmn  
FROM:

#040 -- SPECIAL HEARING  
12026-28 Park Heights Avenue

FOR:

03A91ND265MICHRC  
BA C002132PM01-22-97

\$250.00

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

No.

040400

DATE 7/22/97 ACCOUNT R-001-6150

AMOUNT \$ 15.00

RECEIVED  
FROM:

Nathanson

FOR:

Photo copies

Hi-Caliber Towing Case # 97-703 SPH

DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

MICROFILMED

PAID RECEIPT

PROCESS ACTUAL TIME  
7/22/1997 7/22/1997 12:25:27

REF MS02 CASHIER JRIC JMR DRG:G  
MISCELLANEOUS CASH RECEIPT

Receipt # 005803

CR NO. 040400

15.00 CASH  
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No.: 97-303 SPH

Petitioner/Developer: HI-CALIBER, ETAL

% JULIUS LICHTER, ESQ

Date of Hearing/Closing: 8/6/97

Baltimore County Department of  
Permits and Development Management  
County Office Building, Room 111  
111 West Chesapeake Avenue  
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law  
were posted conspicuously on the property located at #12026 PARK HEIGHTS AVE

The sign(s) were posted on 7/21/97  
(Month, Day, Year)

Sincerely,

Patrick M. O'Keefe 7/28/97  
(Signature of Sign Poster and Date)

Patrick M. O'Keefe

(Printed Name)

523 Penny Lane

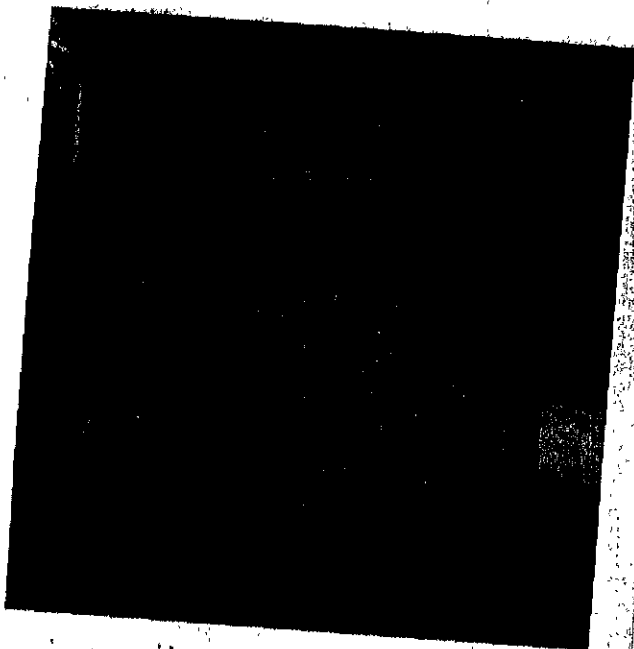
(Address)

Hunt Valley, MD 21030

(City, State, Zip Code)

(410) 666-5366

Pager (410) 646-8354  
(Telephone Number)



97-303 SPH  
#12026 PARK HGTS. AVE.  
7/21/97  
H-8/6/97

MICROFILMED

RE: Case No.: 97-303 SPH

Petitioner/Developer: \_\_\_\_\_

EVAN M. SHIFREN

Date of Hearing/Closing: \_\_\_\_\_

Baltimore County Department of  
Permits and Development Management  
County Office Building, Room 111  
111 West Chesapeake Avenue  
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law  
were posted conspicuously on the property located at 12026-28 PARK  
HEIGHTS AVE.

The sign(s) were posted on 10/30/97  
(Month, Day, Year)

Sincerely,

Gary C. Freund 10/30  
(Signature of Sign Poster and Date)

GARY C. FREUND  
(Printed Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

97 NOV 4 - 4 AM 8:59

RECEIVED  
COUNTY BOARD OF APPEALS

CASE No 97 303 SP

I WANT TO APPEAL THIS CASE  
(Shifting the Burden of Proof)

DISTRIBUTION  
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

No.

002668

DATE

10 Aug 97

ACCOUNT

R-001-6150

AMOUNT \$

210.00

RECEIVED  
FROM:

Hi-Caliber Towing & Auto LTO

FOR:

Appeal (140 + 150)

97-303-SPH

CASHIER'S VALIDATION

← NOTICE  
OF  
APPEAL  
FILED  
BY EVAN SHIFREN  
9-10-97

Hi-Caliber Towing & Auto Service Inc.  
12026 Park Heights Avenue  
Owings Mills, MD 21117  
833-2886

All Around Auto Repairs  
Body Repairs & Electrical Problems  
Are Our Specialty  
Insurance Claims Welcome

Located On Park Heights Near Walnut Ave.

PETITION OF: Evan Shifren  
CIVIL ACTION # 3-C-98-05683  
IN THE MATTER OF EVAN SHIFREN / HI-CALIBER  
TOWING

RECEIVED FROM THE COUNTY BOARD OF  
APPEALS EXHIBITS, BOARD'S RECORD  
EXTRACT & TRANSCRIPT FILED IN THE  
ABOVE-ENTITLED CASE, AND ZONING  
COMMISSIONER'S FILE AND EXHIBITS

*Deeth W. J.*  
Clerk's Office

I e: 9/17/98

MICROFILMED

TO: PUTUXENT PUBLISHING COMPANY  
February 6, 1997 Issue - Jeffersonian

Please forward billing to:

Julius W. Lichter, Esq.  
Levin & Gann, P.A.  
305 W. Chesapeake Avenue  
Towson, MD 21204  
321-0600

---

#### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-303-SPH (Item 303)  
12026-28 Park Heights Avenue  
W/S Park Heights Avenue, 1650<sup>1</sup>+/- S of c/l Walnut Avenue  
4th Election District - 3rd Councilmanic  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.

Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

HEARING: TUESDAY, FEBRUARY 25, 1997 at 2:00 p.m. in Room 106, County Office Building.

LAWRENCE E. SCHMIDT  
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

January 31, 1997

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-303-SPH (Item 303)  
12026-28 Park Heights Avenue  
W/S Park Heights Avenue, 1650' +/- S of c/l Walnut Avenue  
4th Election District - 3rd Councilmanic  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.

Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

HEARING: TUESDAY, FEBRUARY 25, 1997 at 2:00 p.m. in Room 106, County Office Building.

Arnold Jablon  
Director

cc: Evan M. Shifren/Hi-Caliber Towing, Inc.  
Julius W. Lichter, Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 10, 1997.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204


February 21, 1997

NOTICE OF REASSIGNMENT

Rescheduled from 2/25/97  
CASE NUMBER: 97-303-SPH (Item 303)  
12026-28 Park Heights Avenue  
W/S Park Heights Avenue, 1650'+/- S of c/l Walnut Avenue  
4th Election District - 3rd Councilmanic  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.

Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

HEARING: TUESDAY, MARCH 25, 1997 at 2:00 p.m. in Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

  
Arnold Jablon  
Director

cc: Michael D. Vogelstein, Esq.  
Julius Lichter, Esq.  
Evan M. Shifren/Hi-Caliber Towing, Inc.  
Carl and Pat Nathanson  
Douglas Zinn/Worthington-Woodsyde Association  
Paula Houck/Executive Office  
Councilman S. Bryan McIntire  
Lee Shpritz  
Art Brown  
James Seal  
Mary Fitchett  
Stanton Wingrat  
Eugene Reynolds  
Janet Trott  
Doris Woodward  
Myron Werba  
Valleys Planning Council

NOTE: Please be advised that if the property must be posted giving notice of the new hearing date.

MICROFILMED





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

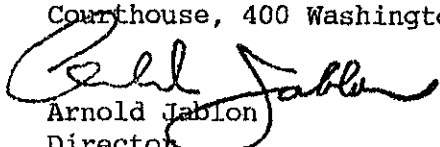
February 21, 1997

NOTICE OF REASSIGNMENT

Rescheduled from 2/25/97  
CASE NUMBER: 97-303-SPH (Item 303)  
12026-28 Park Heights Avenue  
W/S Park Heights Avenue, 1650'+/- S of c/l Walnut Avenue  
4th Election District - 3rd Councilmanic  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.

Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

HEARING: TUESDAY, MARCH 25, 1997 at 2:00 p.m. in Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

  
Arnold Jablon  
Director

cc: Michael D. Vogelstein, Esq.  
Julius Lichter, Esq.  
Evan M. Shifren/Hi-Caliber Towing, Inc.  
Carl and Pat Nathanson  
Douglas Zinn/Worthington-Woodsyde Association  
Paula Houck/Executive Office  
Councilman S. Bryan McIntire  
Lee Shpritz - **NOT SEND - NEED BETTER ADDRESS**  
Art Brown  
James Seal  
Mary Fitchett  
Stanton Wingrat  
Eugene Reynolds  
Janet Trott  
Doris Woodward  
Myron Werba  
Valleys Planning Council

NOTE: Please be advised that if the property must be posted giving notice of the new hearing date.

MICROFILMED





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

March 24, 1997

NOTICE OF REASSIGNMENT  
CONFIRMATION - AGREED DATE BETWEEN ATTORNEYS

Rescheduled from 2/25/97 AND 3/25/97  
CASE NUMBER: 97-303-SPH (Item 303)  
12026-28 Park Heights Avenue  
W/S Park Heights Avenue, 1650' +/- S of c/l Walnut Avenue  
4th Election District - 3rd Councilmanic  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.

Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

HEARING: FRIDAY, MAY 16, 1997 at 9:00 a.m., 4th floor hearing room, County Courts Building, 401 Bosley Avenue.

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon  
Director

cc: Michael D. Vogelstein, Esq.  
Julius Lichter, Esq.  
Evan M. Shifren/Hi-Caliber Towing, Inc.  
Carl and Pat Nathanson  
Douglas Zinn/Worthington-Woodsyde Association  
Paula Houck/Executive Office  
Councilman S. Bryan McIntire  
Lee Shpritz  
Art Brown  
James Seal  
Mary Fitchett  
Stanton Wingrat  
Eugene Reynolds  
Janet Trott  
Doris Woodward  
Myron Werba  
Valleys Planning Council

MICROFILMED

PLEASE NOTE THAT THE ZONING NOTICE SIGN MUST BE CHANGED TO REFLECT THE  
NEW HEARING DATE.



Printed with Soybean Ink  
on Recycled Paper



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
410-887-3180

Hearing Room - Room 48  
Old Courthouse, 400 Washington Avenue

December 29, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-303-SPH

IN THE MATTER OF: EVAN M. SHIFREN -Legal Owner; HI-CALIBER TOWING, INC. -Petitioners 4th E; 3rd C  
12026-28 Park Heights Avenue

(Petition for Special Hearing DISMISSED by Zoning Commissioner's Order dated August 12, 1997.)

ASSIGNED FOR:

WEDNESDAY, MAY 6, 1998 @ 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco  
Administrator

---

cc: Appellant /Petitioner : Evan Shifren /Legal Owner  
~~Julius W. Lichten, Esquire~~ OUT OF CASE - PER LTR OF 1/7/98  
Counsel for Protestants : Michael D. Vogelstein, Esquire  
Alexandra McMahan /Valleys Planning Council  
Dick and Gayle Newman  
Marilyn and David Larach  
Carl and Pat Nathanson  
Loretta and Eugene Reynolds  
Nancy and James Seal, Jr.  
People's Counsel for Baltimore County  
Pat Keller, Director /Planning  
Lawrence E. Schmidt /Z.C.  
Arnold Jablon, Director /PDM  
James H. Thompson, Code Enforcement /PDM  
Virginia W. Barnhart, County Attorney

MICROFILMED



Case No. 97-303-SPH

Evan M. Shifren, L.O.; H1-Caliber  
Towsing, Inc., C.P. - Petitioners

W/s Park Heights Ave., 1650 +/- S of C/1  
Walnut Avenue (12026-28 Park Heights Ave.)

4th Election District

Appealed: 9/10/97

(See attached copy of  
Plan to acc. Petition)

**MICROFILMED**



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

February 24, 1997

Julius W. Lichter, Esquire  
Levin & Gann, P.A.  
305 W. Chesapeake Avenue  
Towson, MD 21204

RE: Item No.: 303  
Case No.: 97-303-SPH  
Petitioner: Evan M. Shifren

Dear Mr. Lichter:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on January 21, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.  
Zoning Supervisor

WCR/re  
Attachment(s)

MICROFILMED



TO: Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management

FROM: R. Bruce Seeley *RBS/gjp*  
DEPRM

SUBJECT: Zoning Item #303 - Shifren Property  
Zoning Advisory Committee Meeting of February 3, 1997

MICROFILMED



Baltimore County Government  
Fire Department



700 East Joppa Road Suite 901  
Towson, MD 21286-5500

(410) 887-4500

DATE: 02/06/97

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: EVAN M. SHIFREN

Location: W/S PARK HEIGHTS AVE. 1650' S OF CENTERLINE WALNUT AVE.  
(12026-28 PARK HEIGHTS AVE.)

Item No.: 303

Zoning Agenda: SPECIAL HEARING

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD  
Fire Marshal Office, PHONE 887-4881, MS-1102F

MICROFILMED

cc: File



B A L T I M O R E   C O U N T Y ,   M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO:        Arnold Jablon, Director  
            Permits and Development  
            Management

DATE:   February 5, 1997

FROM:     Pat Keller, Director  
            Office of Planning

SUBJECT:   Petitions from Zoning Advisory Committee

The Office of Planning has no comments on the following petition(s):

Item Nos. 288, 303, 304

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495.

Prepared by:

*Jeffrey W. Long*

Division Chief:

*Gary L. Keller*

PK/JL

MICROFILMED



**Maryland Department of Transportation**  
**State Highway Administration**

David L. Winstead  
Secretary  
Parker F. Williams  
Administrator

Ms. Roslyn Eubanks  
Baltimore County Office of  
Permits and Development Management  
County Office Building, Room 109  
Towson, Maryland 21204

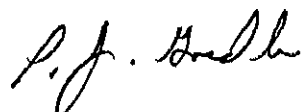
RE: Baltimore County 2.3.97  
Item No. 303 WCR

Dear Ms. Eubanks:

We have reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance(s) onto MD/US 129 are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.  
Thank you for the opportunity to review this item.

Very truly yours,

  
/s/ Ronald Burns, Chief  
Engineering Access Permits  
Division

LG

My telephone number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

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BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Department of Permits & Development  
Management

Date: February 18, 1997

FROM: *RWB* Robert W. Bowling, Chief  
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting  
for February 10, 1997  
Item Nos. 298, 299, 303, 305, 307 & 310

The Development Plans Review Division has reviewed the subject zoning item, and we have no comments.

RWB:HJO:cab

cc: File



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

January 22, 1997

Julius W. Lichter, Esquire  
Levin & Gann  
305 West Chesapeake Avenue  
Towson, MD 21204

RE: Drop-Off Petition (Item #303)  
12026-27 Park Heights Avenue  
4th Election District

Dear Mr. Lichter:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. Once a detailed review has been completed by the staff, those comments will be forwarded to you (hopefully before the hearing).

As Baltimore County is no longer responsible for posting properties, I have enclosed the proper forms pertaining to this. There is a form indicating the posting standards required by Baltimore County, as well as a list of vendors serving the Baltimore County area. The sign must contain the wording indicated on the "Zoning Notice" form and the certificate of posting must be completed by the poster and returned to Gwendolyn Stephens.

If you have any questions regarding the sign posting, please do not hesitate to contact Gwendolyn Stephens at 887-3391.

Very truly yours,

WCR/scj

W. Carl Richards, Jr.  
Zoning Supervisor  
Zoning Review

WCR:scj

Enclosures

MICROFILMED





Code

# Enforcement

2/25/97 2 PM

Baltimore County  
Department of Permits & Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
(410) 887-3351

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

97-303-SP#1

TO: Larry E. Schmidt  
Zoning Commissioner

DATE: January 31, 1997

FROM: James H. Thompson - JP  
Code Enforcement Supervisor

SUBJECT: ITEM NO.: 303  
LEGAL OWNERS: Evan M. Shifren, Cindy L. Shifren  
CONTRACT PURCHASER: Hi-Caliber Towing, Inc.

CITATION NO.: 93-150 ABCD

LOCATION OF VIOLATION: 12026-28 Park Heights Avenue  
4th Election District

DEFENDANTS: Evan M. Shifren  
Cindy L. Shifren  
Hi-Caliber Towing, Inc.  
12026-28 Park Heights Avenue

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s):

NAME

ADDRESS

See attached paper.

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Code Enforcement Supervisor, so that the appropriate action may be taken relative to the violation case.

JHT/JP/sgh

MICROFILMED

LIST OF PARTIES TO BE NOTIFIED OF HEARING DATE

Citation No. 93-150 ABCD

- 1.) Mrs. Pat Nathanson  
Mr. Carl L. Nathanson, Esquire  
12119 Park Heights Avenue  
Owings Mills, MD 21117
- 2.) Mr. Douglas Zinn, President  
Worthington-Woodsyde Association  
7 Woodsyde Place  
Owings Mills, MD 21117
- 3.) Paula Houck, Executive Assistant  
Baltimore County Executive Office  
400 Washington Avenue, Towson  
M.S. 2M01A
- 4.) Councilman S. Bryan McIntire  
Baltimore County Council  
400 Washington Avenue, Towson  
M.S. 2201
- 5.) Michael D. Vogelstein, Esquire  
Calvert Professional Bldg.  
321 North Calvert Street  
Baltimore, Maryland 21202
- 6.) Mr. Lee Shpritz  
3 Hunt Valley Court  
Owings Mills, MD 21117
- 7.) Mr. Art Brown  
1 Hounds Tooth Court  
Owings Mills, MD 21117
- 8.) Mr. James Seal  
11958 Park Heights Avenue  
Owings Mills, MD 21117
- 9.) Ms. Mary Fitchett  
12105 Park Heights Avenue  
Owings Mills, MD 21117
- 10.) Mr. Stanton Wingrat  
3 Huntfield Court  
Owings Mills, MD 21117
- 11.) Mr. Eugene Reynolds  
11962 Park Heights Avenue  
Owings Mills, MD 21117

- NOT GOOD ADDRESS

(continued)

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Page 2

List of Parties To be Notified of Hearing Date  
Citation No. 93-150 ABCD

- 12.) Ms. Janet Trott  
~~12022 Park Heights Avenue~~  
~~Owings Mills, MD 21117~~
- 13.) Ms. Doris Woodward  
11935 Park Heights Avenue  
Owings Mills, MD 21117
- 14.) Mr. Myron Werba  
12001 Park Heights Avenue  
Owings Mills, MD 21117
- 15.) Valleys Planning Council, Inc.  
212 Washington Avenue  
P.O. Box 5402  
Towson, MD 21285-5402

FORWARDING ADDRESS  
8803 GROFFS MILL DR  
OWINGS MILLS 21117-4854

MICROFILMED



1.) Mrs. Pat Nathanson

Mr. Carl T. Nathanson, Esquire

12119 Park Heights Avenue

Owings Mills, MD 21117

2.)

Mr. Douglas Zinn, President

Worthington-Woodsyde Association

7 Woodsyde Place

Owings Mills, MD 21117

3.)

Paula Houck, Executive Assistant

Baltimore County Executive Office

400 Washington Avenue, Towson

M.S. 2M01A

4.)

Councilman S. Bryan McIntire

Baltimore County Council

400 Washington Avenue, Towson

M.S. 2201

5.)

Michael D. Vogelstein, Esquire

Calvert Professional Bldg.

321 North Calvert Street

Baltimore, Maryland 21202

6.)

Mr. Lee Shpritz

3 Hunt Valley Court

Owings Mills, MD 21117

7.)

Mr. Art Brown

1 Hounds Tooth Court

Owings Mills, MD 21117

8.)

Mr. James Seal

11958 Park Heights Avenue

Owings Mills, MD 21117

9.)

Ms. Mary Fitchett

12105 Park Heights Avenue

Owings Mills, MD 21117

10.)

Mr. Stanton Wingrat

3 Huntfield Court

Owings Mills, MD 21117

11.)

Mr. Eugene Reynolds

11962 Park Heights Avenue

Owings Mills, MD 21117

(continued)

(continued)



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

February 13, 1997

Julius W. Lichter, Esq.  
Levin & Gann  
305 W. Chesapeake Avenue  
Towson, Maryland 21204

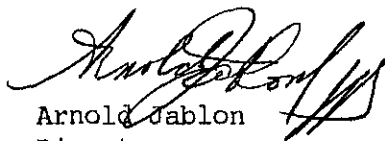
Dear Mr. Lichter:

Re: CASE NUMBER: 97-303-SPH  
PETITIONER(S): Hi Caliber Towing/Shifren  
LOCATION: 12026 Park Heights Avenue

The above matter, previously assigned to be hearing on February 25, 1997 has been postponed at the request of Michael D. Vogelstein, attorney for the protestants.

Please be advised that if the property must be posted giving notice of the postponement.

Notification of the new hearing date will be forwarded shortly.

  
Arnold Jablon  
Director

cc: Michael D. Vogelstein, Esq.  
Evan M. Shifren/Hi-Caliber Towing, Inc.  
Carl and Pat Nathanson  
Douglas Zinn/Worthington-Woodsyde Association  
Paula Houck/Executive Office  
Councilman S. Bryan McIntire  
Lee Shpritz  
Art Brown  
James Seal  
Mary Fitchett  
Stanton Wingrat  
Eugene Reynolds  
Janet Trott  
Doris Woodward  
Myron Werba  
Valleys Planning Council

MICROFILMED





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

February 12, 1997

Michael D. Vogelstein, Esquire  
201 North Charles Street  
Suite 801  
Baltimore, MD 21201

RE: Drop-Off Petition (Item 303)  
Case #97-303-SPH  
12026-27 Park Heights Avenue  
4th Election District

Dear Mr. Vogelstein:

Reference is made to your letter of February 7, 1997 requesting (1) dismissal of the above referenced special hearing accepted for filing by this office on January 21, 1997 on the basis of res judicata or (2) postponement so that you could attend.

You have requested that this office dismiss the special hearing application pursuant to Judge Fader's December 28, 1995 denial in Circuit Court case #V93-442-SPH. This office provides intrinsic support to the zoning commissioner (hearing officer) and Board of Appeals regarding the acceptance and completion of zoning cases. We are the purveyors, but not the deciders. The appropriate place to motion for a dismissal based on a prior judgment would be before the zoning commissioner. The only moratorium in the Baltimore County Zoning Regulations regarding the acceptance of zoning petitions (after denial) is as follows (emphasis added):

"500.12 -- If a zoning reclassification or special exception petition has been denied, the zoning commissioner may not accept for filing any other zoning reclassification or special exception petition with respect to the same property or any part of that property until at least eighteen months have passed from the date of the final order relating to the previous petition, whether that order is issued by the zoning commissioner or deputy zoning commissioner, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal. [B.C.Z.R., 1955; Bill No. 144, 1959; No. 25, 1978.]"

MICROFILMED



Michael D. Vogelstein, Esquire  
February 12, 1997  
Page 2

Accordingly we could not refuse the above referenced special hearing application since it is not a reclassification or special exception petition.

I have forwarded your request for a postponement to Gwendolyn Stephens in this office and she will contact you regarding the docket calendar.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at (410) 887-3391.

Very truly yours,



W. Carl Richards, Jr.  
Zoning Supervisor  
Zoning Review

WCR:scj

c: Donald T. Rascoe  
Gwendolyn G. Stephens  
Julius W. Lichter, Esquire

MICROFILMED



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

March 14, 1997

Julius W. Lichter, Esquire  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Towson, MD 21204

RE: Drop-Off Petition Review (Item #303)  
12026-28 Park Heights Avenue  
4th Election District


Dear Mr. Lichter:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

1. Since a portion of the 1 story frame garage shows as being 3 feet, 7 inches across this property line:
  - (a) the adjoining property owner's signature must be on this special hearing form.
  - (b) a variance for a zero foot setback or a special hearing by the adjoining property owner must be filed
  - (c) the adjoining property description must be submitted.
2. Special hearing at Board of Appeals case no. 93-442-SPH is not for this property.
3. Add area (square footage) of existing dwelling use and of the office use. Add number of bays in the garage.

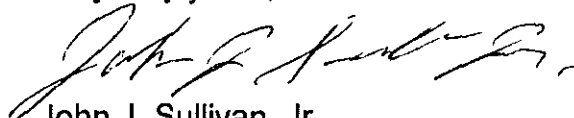
MICROFILMED



4. Label any outside storage of damaged-disabled vehicles. If none, state so.
5. Show traffic flow, i.e.  and width of entrance and travelways.
6. Add any signs (attached or free-standing) with dimensions, elevations, and setback to the street right-of-way. If none, state so.
7. If not in floodplain, add this note on the plan.
8. Label and dimension parking spaces.
9. Contact Avery Harden, Developers Engineering Section, 887-3751, about any required landscaping, plus that order in zoning case no. 85-167-SPH.
10. Add note "any illumination will not reflect into residential lots or public streets". If none, state so.
11. Need printed or typed name of person signing for contract purchaser on the petition form.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,



John J. Sullivan, Jr.  
Planner II  
Zoning Review

JJS:scj

Enclosure (receipt)

c: Zoning Commissioner

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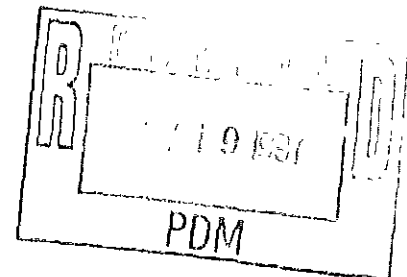


Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

May 7, 1997

Julius Lichter, Esquire  
Levin and Gann  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204



RE: PETITION FOR SPECIAL HEARING  
Contract Purchaser: Hi Caliber Towing  
Legal Owner: Evan Shifren  
Case No. 97-303-SPH

Dear Mr. Lichter:

Pursuant to our telephone conversation, this date, concerning the above-captioned matter, this letter is to confirm that this case will be heard on Thursday, May 22, 1997 at 9:00 A.M., in Room 106 of the County Office Building.

Furthermore, as was agreed to during our conversation on this subject, it is understood that you have notified all parties to the case of the rescheduled time for the hearing and have changed the Posting Sign on the property to reflect the new date and time.

Should you have any questions concerning this matter, please do not hesitate to call me.

Very truly yours,

A handwritten signature in cursive script, reading "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn

cc: Gwendolyn Stephens, Docket Clerk, PDM  
People's Counsel

MICROFILMED



IN RE:           Petition for Special Hearing       \*   BEFORE THE  
                  Evan M. Shifren and  
                  Hi-Caliber Towing, Inc.       \*   ZONING COMMISSIONER  
  
                  Petitioner                   \*   OF  
  
  \*   BALTIMORE COUNTY  
  
  \*   Case No.: 97-303-SPH  
\*       \*       \*       \*       \*       \*       \*       \*       \*       \*

**REQUEST FOR SUBPOENA DUCES TECUM**

Pursuant to Section 26-206(e) of the Baltimore County Code, please issue a subpoena *duces tecum* for the following named witness and command him to appear at the Hearing on the Petition for Special Hearing of Evan M. Shifren and Hi-Caliber Towing, Inc. scheduled before the Zoning Commissioner of Baltimore County on **Thursday, May 22, 1997 at 9:00 a.m. in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204:**

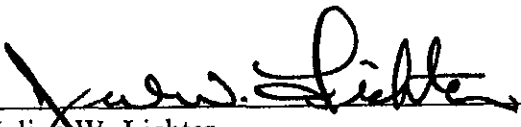
Mr. Bruce Anoff  
3207 Walnut Avenue  
Owings Mills, Maryland 21117

The witness should also be directed to bring with him to the Hearing **any and all documents, plans, files, correspondence, policies, directives, records, and any other non-privileged information in his custody, possession or control** concerning the subject property.

---

Zoning Commissioner of Baltimore County

This subpoena request is made on behalf of the undersigned attorneys for the above-referenced Petitioner.

  
\_\_\_\_\_  
Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED



IN RE:           Petition for Special Hearing       \*   BEFORE THE  
                  Evan M. Shifren and               \*   ZONING COMMISSIONER  
                  Hi-Caliber Towing, Inc.         \*   OF  
  
                  Petitioner                       \*   BALTIMORE COUNTY  
  
  \*   Case No.: 97-303-SPH  
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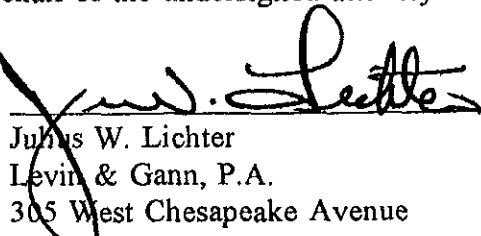
Ms. Mary Fitchett  
12105 Park Heights Avenue  
Owings Mills, Maryland 21117

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Zoning Commissioner of Baltimore County

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Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED

IN RE:           **Petition for Special Hearing**       \*   **BEFORE THE**  
                  **Evan M. Shifren and**                   \*   **ZONING COMMISSIONER**  
                  **Hi-Caliber Towing, Inc.**               \*   **OF**  
  
                                  **Petitioner**                   \*   **BALTIMORE COUNTY**  
  
  \*   **Case No.: 97-303-SPH**

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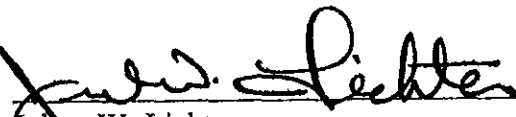
Mr. Wayne Fox  
Road #1 Box 702  
Brodebecks, Pennsylvania 17329

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Zoning Commissioner of Baltimore County

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Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED

IN RE:        Petition for Special Hearing  
              Evan M. Shifren and  
              Hi-Caliber Towing, Inc.

Petitioner

\*    BEFORE THE  
\*    ZONING COMMISSIONER  
  
\*    OF  
  
\*    BALTIMORE COUNTY  
  
\*    Case No.: 97-303-SPH

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Mr. Donald German  
12111 Park Heights Avenue  
Owings Mills, Maryland 21117

The witness should also be directed to bring with him to the Hearing **any and all documents, plans, files, correspondence, policies, directives, records, and any other non-privileged information in his custody, possession or control concerning the subject property.**

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Zoning Commissioner of Baltimore County

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Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED

IN RE:      **Petition for Special Hearing**  
             **Evan M. Shifren and**  
             **Hi-Caliber Towing, Inc.**

**Petitioner**

\*    **BEFORE THE**  
\*    **ZONING COMMISSIONER**  
  
\*    **OF**  
  
\*    **BALTIMORE COUNTY**  
  
\*    **Case No.: 97-303-SPH**

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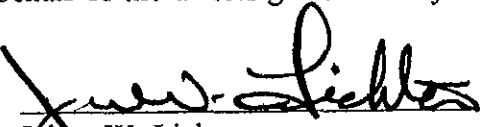
Mr. Bob Klein  
12008 Park Heights Avenue  
Owings Mills, Maryland 21117

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Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED

IN RE:           Petition for Special Hearing       \*   BEFORE THE  
                  Evan M. Shifren and           \*   ZONING COMMISSIONER  
                  Hi-Caliber Towing, Inc.       \*  
  
                  Petitioner                   \*   OF  
  
  \*   BALTIMORE COUNTY  
  
  \*   Case No.: 97-303-SPH

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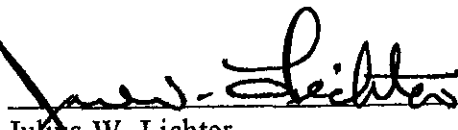
Mrs. Linda Klein  
12008 Park Heights Avenue  
Owings Mills, Maryland 21117

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Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

ENCLOSURE

\* \* \* \* \*

Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

## MODULI

\* \* \* \* \*

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Mr. Stanley Rockkind  
N.B.S., Inc.  
5616 Park Heights Avenue  
Owings Mills, Maryland 21117

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Zoning Commissioner of Baltimore County

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Julius W. Lichter  
Levin & Gann, P.A.  
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Towson, Maryland 21204  
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MICROFILMED

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Mr. Kelly Rothen  
12153 Park Heights Avenue  
Owings Mills, Maryland 21117

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## Zoning Commissioner of Baltimore County

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Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILM)



IN RE:      Petition for Special Hearing      \*    BEFORE THE  
             Evan M. Shifren and  
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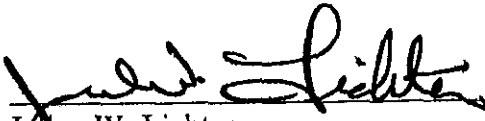
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Mr. Charles Runkles  
N.B.S., Inc  
5616 Park Heights Avenue  
Owings Mills, Maryland 21117

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Towson, Maryland 21204  
(410) 321-0600

\* \* \* \* \*

## MICROFILMED

IN RE:      Petition for Special Hearing  
             Evan M. Shifren and  
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Petitioner

\*    BEFORE THE  
\*    ZONING COMMISSIONER  
  
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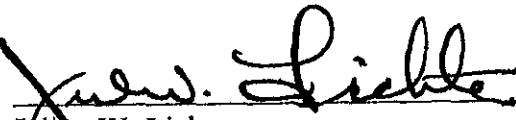
Mrs. Jody Stein  
12412 Knoll Crest Drive  
Reisterstown, Maryland 21136

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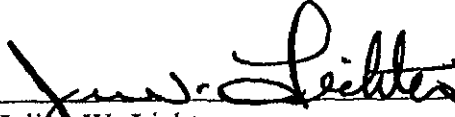
Mr. Michael Sturm  
12137 Park Heights Avenue  
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MICROFILMED

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Petitioner

\*   BEFORE THE  
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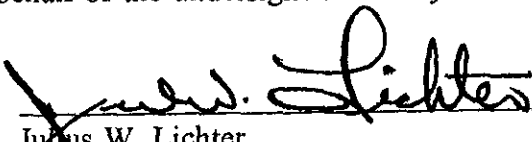
Ms. Judy Sturm  
12145 Park Heights Avenue  
Owings Mills, Maryland 21117

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Julius W. Lichter  
Levin & Gann, P.A.  
805 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED

IN RE:        Petition for Special Hearing  
              Evan M. Shifren and  
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Petitioner

\*    BEFORE THE  
\*    ZONING COMMISSIONER  
  
\*    OF  
  
\*    BALTIMORE COUNTY  
  
\*    Case No.: 97-303-SPH

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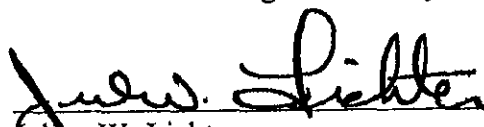
Mr. Gaetano T. Tumminello  
Maryland Department of the Environment  
Waste Management Administration  
Oil Control Program  
2500 Broening Highway  
Baltimore, Maryland 21224

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Julius W. Lichter  
Devlin & Gann, P.A.  
305 West Chesapeake Avenue  
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(410) 321-0600

MICROFILMED

IN RE:      Petition for Special Hearing  
             Evan M. Shifren and  
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Petitioner

\*    BEFORE THE  
\*    ZONING COMMISSIONER  
\*    OF  
\*    BALTIMORE COUNTY  
\*    Case No.: 97-303-SPH

\*    \*    \*    \*    \*    \*    \*    \*    \*    \*    \*

**REQUEST FOR SUBPOENA DUCES TECUM**

Pursuant to Section 26-206(e) of the Baltimore County Code, please issue a subpoena *duces tecum* for the following named witness and command him to appear at the Hearing on the Petition for Special Hearing of Evan M. Shifren and Hi-Caliber Towing, Inc. scheduled before the Zoning Commissioner of Baltimore County on **Thursday, May 22, 1997 at 9:00 a.m. in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204:**

Mr. Roland Whitcomb  
12516 Park Heights Avenue  
Owings Mills, Maryland 21117

The witness should also be directed to bring with him to the Hearing **any and all documents, plans, files, correspondence, policies, directives, records, and any other non-privileged information in his custody, possession or control** concerning the subject property.

---

Zoning Commissioner of Baltimore County

This subpoena request is made on behalf of the undersigned attorneys for the above-referenced Petitioner.



Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED

IN RE:

Petition for Special Hearing  
Evan M. Shifren and  
Hi-Caliber Towing, Inc.

Petitioner

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF  
\* BALTIMORE COUNTY  
\* Case No.: 97-303-SPH

\* \* \* \* \*

**REQUEST FOR SUBPOENA DUCES TECUM**

Pursuant to Section 26-206(e) of the Baltimore County Code, please issue a subpoena *duces tecum* for the following named witness and command him to appear at the Hearing on the Petition for Special Hearing of Evan M. Shifren and Hi-Caliber Towing, Inc. scheduled before the Zoning Commissioner of Baltimore County on **Thursday, May 22, 1997 at 9:00 a.m. in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204:**


Mr. Jeff Zukerberg  
5 Hunt Meadow Court  
Owings Mills, Maryland 21117

The witness should also be directed to bring with him to the Hearing **any and all documents, plans, files, correspondence, policies, directives, records, and any other non-privileged information in his custody, possession or control** concerning the subject property.

---

Zoning Commissioner of Baltimore County

This subpoena request is made on behalf of the undersigned attorneys for the above-referenced Petitioner.



---

Julius W. Lichter  
Levin & Gann, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0600

MICROFILMED





Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

June 3, 1997

Julius Lichter, Esquire  
Levin and Gann  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204

Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
Contract Purchaser: Hi Caliber Towing  
Legal Owner: Evan Shifren  
Property 12026-28 Park Heights Avenue  
Case No. 97-303-SPH

Dear Counsel:

Pursuant to the ruling made in open hearing regarding the above matter, kindly be advised that this case has been continued from its scheduled hearing date of May 22, 1997. The case has been reset to Wednesday, August 6, 1997 at 9:00 A.M. I fully anticipate that the new Zoning Commissioner's Hearing Room, Room 407, located on the 4th floor of the County Courts Building (401 Bosley Avenue) will be completed by that time. Thus, a hearing will be conducted in that room. If unexpected delays necessitate that the hearing be held elsewhere, same will be conducted in Room 118 of the Old Court House.

Also, as discussed after the abbreviated hearing on May 22, 1997, counsel will be afforded the opportunity to submit pre-trial memorandum. I suspect that those memorandum may discuss the impact of the Order issued by John F. Fader, III, Judge of the Circuit Court for Baltimore County on December 28, 1995 in case No. 93-442-SPH. Any memoranda which counsel wish to submit should be offered on or before the close of business on Friday, July 11, 1997.

Please do not hesitate to contact me should you have any questions regarding the above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn

c: Protestants on Sign-in Sheet and letters received  
in opposition as of May 28, 1997.

MICROFILMED





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

September 17, 1997

Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, MD 21201

RE: Petition for Special  
Hearing  
W/S Park Heights Ave.,  
1650' +/- S of c/l Walnut  
Avenue  
(12026-28 Park Heights  
Avenue)  
4th Election District  
3rd Councilmanic District  
Evan M. Shifren - Legal  
Owner  
Lessee: Hi-Caliber Towing,  
Inc. - Petitioners  
Case No. 97-303-SPH

Dear Mr. Vogelstein:

Please be advised that an appeal of the above-referenced case was filed in this office on September 10, 1997 by Mr. Evan Shifren. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call 410-887-3180.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arnold Jablon", is written over a horizontal line.

ARNOLD JABLON  
Director

AJ:rye

c: People's Counsel

MICROFILMED



APPEAL

Petition for Special Hearing  
W/S Park Heights Ave., 1650' +/- S of c/l Walnut Avenue  
(12026-28 Park Heights Avenue)  
4th Election District - 3rd Councilmanic District  
Evan M. Shifren - Legal Owner  
Lessee: Hi-Caliber Towing, Inc. - Petitioners  
Case No. 97-303-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comments

Petitioners and Protestants Sign-In Sheets

Two Letters in Support of the Petitioner

Twenty-eight Letters in Opposition of the Petitioner

State of Maryland Department of the Environment Tank  
Removal/Abandonment Notice dated July 19, 1994

State of Maryland Department of the Environment Tank  
Removal/Abandonment Notice dated March 15, 1996

Letter from Richard A. Carey, Administrator, Comptroller of the  
Treasury, Motor Fuel Tax Unit to Jeffrey N. Perlow dated March 4, 1996

Memorandum from Carol Soares, Revenue Administrator-Legal Unit,  
Comptroller of the Treasury, to Jeffrey Perlow, Code Enforcement  
Inspector dated March 26, 1996

Letter from W. Carl Richards, Jr., Zoning Supervisor, to Michael D.  
Vogelstein, Esquire dated February 12, 1997

Letter from John J. Sullivan, Jr., Zoning Review, to Julius W. Lichter,  
Esquire dated March 14, 1997

Pre-Trial Memorandum dated July 11, 1997

Motion to Dismiss Petition for Special Hearing dated July 11, 1997

Letter from Julius W. Lichter, Esquire to Lawrence E. Schmidt, Zoning  
Commissioner dated July 17, 1997

Motion to Strike Amendment dated July 24, 1997

Zoning Commissioner's Order dated August 12, 1997 (Dismissed)

Notice of Appeal received on September 10, 1997 from Evan Shifren

c: Julius W. Lichter, Esquire, Levin and Gann, 305 W. Chesapeake  
Avenue, Suite 113, Towson, MD 21204  
Michael D. Vogelstein, Esquire, 201 N. Charles Street, Suite 801,  
Baltimore, MD 21201  
Mr. Evan M. Shifren, 12026-28 Park Heights Avenue, Owings Mills,  
Maryland 21117  
People's Counsel of Baltimore County, M.S. 2010  
Lawrence Schmidt, Zoning Commissioner  
Arnold Jablon, Director of PDM

MICROFILMED

Petition for Special Hearing  
W/S Park Heights Ave., 1650' +/- S of c/l Walnut Avenue  
(12026-28 Park Heights Avenue)  
4th Election District - 3rd Councilmanic District  
Evan M. Shifren - Legal Owner  
Lessee: Hi-Caliber Towing, Inc. - Petitioners  
Case No. 97-303-SPH

RECEIVED  
COUNTY BOARD OF APPEALS  
97 SEP 18 PM 2:39

- ✓ Petition for Special Hearing
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Certificate of Publication
- ✓ Entry of Appearance of People's Counsel
- ✓ Zoning Advisory Committee Comments
- ✓ Petitioners and Protestants Sign-In Sheets
- ✓ Two Letters in Support of the Petitioner
- ✓ Twenty-eight Letters in Opposition of the Petitioner
- ✓ State of Maryland Department of the Environment Tank Removal/Abandonment Notice dated July 19, 1994
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- ✓ Memorandum from Carol Suares, Revenue Administrator-Legal Unit, Comptroller of the Treasury, to Jeffrey Perlow, Code Enforcement Inspector dated March 26, 1996
- ✓ Letter from W. Carl Richards, Jr., Zoning Supervisor, to Michael D. Vogelstein, Esquire dated February 12, 1997
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- ✓ Motion to Dismiss Petition for Special Hearing dated July 11, 1997
- ✓ Letter from Julius W. Lichter, Esquire to Lawrence E. Schmidt, Zoning Commissioner dated July 17, 1997
- ✓ Motion to Strike Amendment dated July 24, 1997
- ✓ Zoning Commissioner's Order dated August 12, 1997 (Dismissed)
- ✓ Notice of Appeal received on September 10, 1997 from Evan Shifren

c: ~~Julius W. Lichter, Esquire, Levin and Canna, 305 W. Chesapeake Avenue, Suite 113, Towson, MD 21204~~ *out of case per LTR 11/7/98*  
Michael D. Vogelstein, Esquire, 201 N. Charles Street, Suite 801, Baltimore, MD 21201 *(entered appearance 11-4-97)*  
\* Mr. Evan M. Shifren, 12026-28 Park Heights Avenue, Owings Mills, Maryland 21117  
People's Counsel of Baltimore County, M.S. 2010  
Lawrence Schmidt, Zoning Commissioner  
Arnold Jablon, Director of PDM

Alexandra McMahan  
Valleys Planning Council  
212 Washington Avenue  
Towson, MD 21285

Dick and Gayle Newman  
7 Carolyn Court  
Owings Mills, MD 21117

Pat and Carl L. Nathanson  
12119 Park Heights Avenue  
Owings Mills, MD 21117

Loretta and Eugene Reynolds  
11962 Park Heights Avenue  
Owings Mills, MD 21117

Nancy R. and James F. Seal, Jr.  
11958 Park Heights Avenue  
Owings Mills, MD 21117

Marilyn and David Larach  
3005 Susanna Court  
Owings Mills, MD 21117

MICROFILMED

9/29/97

To: Carl Nathenson FAX 410-752-3050

From: Kathi Bianco /County Board of Appeals

Re: Case No. 97-303-SPH /Hi-Caliber Towing

Attached is the letter of appeal filed by Mr. Shifren in the subject case.

I had overlooked this when going through the file, since it's attached to a copy of the receipt for the appeal fee paid by Mr. Shifren at the time of filing.

Should you have any questions, please call me (410-887-3180).

Kathi Bianco

TOTAL NUMBER OF PAGES (including this page): 2

MICROFILMED

## TRANSMISSION VERIFICATION REPORT

TIME: 09/29/1997 13:58  
NAME: BOARD OF APPEALS  
FAX : 4108873182  
TEL : 4108873180

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

09/29 13:57  
94107523050  
00:00:56  
02  
OK  
STANDARD  
ECM

*Copy of appeal letter  
to Paul Matheson  
per request. 9/29/97*

I WANT TO APPEAL THIS CASE  
(Shifting the Burden of Proof)

[illegible]

Case No. 97-303-SPH

SPH -Approval of existence of valid nonconforming fuel service station with accessory vehicle repairs.

8/12/97 -Z.C.'s Order in which Petition for Special Hearing was DISMISSED; Motion to Dismiss was GRANTED.

---

12/29/97 -Notice of Assignment for hearing scheduled for Wednesday, May 6, 1998 at 10:00 a.m. sent to following:

Evan Shifren /Legal Owner  
Julius W. Lichter, Esquire  
Michael D. Vogelstein, Esquire  
Alexandra McMahan /Valleys Planning Council  
Dick and Gayle Newman  
Marilyn and David Larach  
Carl and Pat Nathanson  
Loretta and Eugene Reynolds  
Nancy and James Seal, Jr.  
People's Counsel for Baltimore County  
Pat Keller, Director /Planning  
Lawrence E. Schmidt /Z.C.  
Arnold Jablon, Director /PDM  
James H. Thompson, Code Enforcement /PDM  
Virginia W. Barnhart, County Attorney

---

4/21/98 -Motion to Dismiss Appeal filed by Michael D. Vogelstein, Esquire, on behalf of Protestants.

---

5/06/98 -Hearing before the Board; Board received argument on Protestants' Motion to Dismiss Appeal from Counsel for Protestants (Vogelstein) and from Petitioner (Shifren). Publicly deliberated immediately thereafter; Board granted Motion to Dismiss by unanimous vote; Order to be issued; appellate period to run from date of written order. (K.F.C.)

MICROFILMED



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Evan M. Shifren (Hi-Caliber Towing, Inc.)  
- Petitioner Case No. 97-303-SPH

DATE : Wednesday, May 6, 1998

BOARD /PANEL : Kristine K. Howanski, Chairman (KKH)  
Donna M. Felling (DMF)  
Charles L. Marks (CLM)

SECRETARY : Kathleen C. Bianco  
Administrator

PURPOSE: To deliberate Case No. 97-303-SPH /Evan M. Shifren /Hi-Caliber Towing, Inc.; argument received this date on Protestants' pre-hearing Motion to Dismiss; Petitioner appeared pro se; Protestants were represented by Michael D. Vogelstein, Esquire.

KKH: We are now ready to deliberate Case No. 97-303-SPH in the matter of Evan M. Shifren and Hi-Caliber Towing, Inc. on the Protestants' Motion to Dismiss. Mr. Marks?

CLM: These types of cases are always very difficult for the Board to both hear and decide. We are not unmindful of the fact that people's lives rely upon the decision of the Board, and the Zoning Commissioner, and the various courts of Maryland.

One of the first principles students learn in law school is that of res judicata; if you have a situation in which the same parties are present; the same issues decided; and even issues that could have been litigated but were not, you are estopped from proceeding in a further hearing.

I've read carefully the Motion to Dismiss. I've listened to the Appellant's request before the Board, and I have to remind myself of cases that went up to the Court of Appeals and the Court of Special Appeals -- This Board, as are all zoning authorities, is required to follow the law. While we may not like the law, it is the law unless it is changed by a court decision.

In Shiflett decided in 1992 -- while that case is not recited in the Motion to Dismiss, I read and re-read it last week -- involves the same elements as this case -- collateral estoppel and res judicata in general. If a proceeding between parties involves the same cause of action as previous proceeding between the same parties, the principle of res judicata applies in all matters litigated. If the proceeding does not involve the same cause of action, the principle of collateral estoppel applies, and only those issues not litigated are permitted.

MICROFILMED

In deference to the Petitioner, I have read and re-read the Motion to Dismiss on at least three occasions and listened to the arguments presented today.

If there ever was an issue that is res judicata and principle of collateral estoppel applies, it is this case. Had opportunity before the Zoning Commissioner and Circuit Court and in all instances has lost this particular appeal. I didn't see anything new or different in the parties, the issues, or the law which applies to this case. There must be some sort of finality in these types of situations.

Everyone is entitled to day in court but while Petitioner has attempted to enter new evidence today, we have not been able to take it. This evidence is but one facet of that case. There was discontinuance for 3 to 4 year period, and, under the regulations, that constitutes the end of the nonconforming use.

That may be discomfoting and I have commiseration for the Petitioner, but the law is clearly the law. Would be contrary to existing facts and applicable law.

Again, having given due consideration to the Motion, the hearing today, and the law and facts, I would have to rule that the Motion to Dismiss should be granted.

KKH: Thank you, Mr. Marks. Ms. Felling?

DMF: We as a Board have concern in making these kinds of decisions that cause difficulty for individuals before us and in particular as it relates to a livelihood. I am not an attorney, although I have had an opportunity to look over the information today and listened to the information presented.

Through my understanding of res judicata principle, I would have to agree that the concepts of that particular principle apply here today in that the parties are the same, and that the claim presented in this action is the same as the one determined in previously -- there is a final decision on the merits that already exists.

I would have to agree that this Motion to Dismiss should be granted.

KKH: Thank you, Ms. Felling.

I too have ultimately come to the same conclusion. I certainly am familiar with the doctrine of res judicata. Mr. Vogelstein put together a very good argument -- like my other Board members, I strained to hear something that might permit

us to hear this matter, and in fairness to Mr. Shifren, this Board is one of very limited jurisdiction in general. We are only able to hear cases properly before us.

This case is one in which all courts would have the same restrictions. In a situation like this, all courts are not permitted to hear a case a second time. Here as well I think I would agree with Mr. Marks that, if it had not gone beyond the Board of Appeals to the Circuit Court, I believe res judicata would have applied (because we did have the kind of hearing contemplated under the doctrine).

More significant is that this case did not stop at the Board but went on to the Circuit Court level. Taking the evidence most favorable to Mr. Shifren, he was in receipt of newly discovered evidence in 1994 - 5 days after the Board rendered its decision. After that time, the record indicates that Hi-Caliber Towing, Inc., timely filed for review and filed a motion to stay and referenced the newly discovered evidence, so the Circuit Court was apprised of the situation. Ultimately denied the Motion to Stay in February and affirmed the Board of Appeals February 28, 1995, a little over one year after the alleged newly discovered evidence was in hand.

The only way that I could see that the issue would survive would be had Mr. Shifren then taken an appeal to the Court of Special Appeals, and preserved the argument. Once the case ended at that Circuit Court level, and no appeal was taken to the Court of Special Appeals or the Court of Appeals, the case is pronounced dead. Basically, it's done. And on that basis, I have to, somewhat reluctantly, conclude that we don't have the ability to hear something else.

I say reluctantly because we cannot tamper with it even if that prior decision was wrong. It's now been pronounced over with. A decision is reached and you move on. There is value in having a decision made and the parties moving on. A decision was made. No one took an appeal from that, and the matter was over.

I just do not see that this Board has the ability -- we all appear to be in agreement that res judicata does apply in this instance. As Mr. Marks observed, not only does it apply, but it is the exact same parties, the exact same claim. Final judgement on the merits was made at the Circuit Court level.

You're not presented with any of the difficult questions you might find under res judicata or collateral estoppel where parties might differ -- was it really final decision because it was an administrative agency, etc. This is absolutely a black and white case.

Case No. 97-303-SPH Evan M. Shifren /  
Hi-Caliber Towing, Inc. /Minutes of Deliberation

A written opinion will be issued granting the Motion to Dismiss, and any person feeling aggrieved from this decision will have 30 days from the date of that written opinion from which to file an appeal. Today is not that date unless we get the written opinion out on this date.

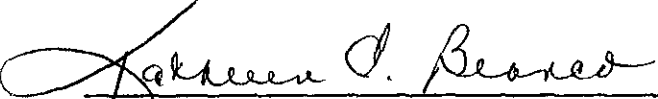
And there may be other courts that can provide the relief that Mr. Shifren is seeking, but we are not that body.

Since we are unanimous, I guess we do not need to further deliberate the issue.

\*\*\*\*\*

These minutes indicate public deliberation in Case No. 97-303-SPH was held this date and a final decision reached by the Board in which the Motion to Dismiss was granted.

Respectfully submitted,

  
Kathleen C. Bianco

B A L T I M O R E   C O U N T Y,   M A R Y L A N D

Inter-Office Correspondence

TO: Arnold Jablon, Director      DATE: April 29, 1998  
Permits & Development Management

FROM: Kathleen C. Bianco  
County Board of Appeals

SUBJECT: Case No. 97-503-SPH /Evan M. Shifren /Hi-Caliber Towing

Attached for your information is a copy of a letter received by FAX this date from Petitioner, Evan Shifren, in the subject matter. Mr. Shifren's letter responds to your memorandum of April 14, 1998 and the subpoena referenced therein.

As indicated below, I've also provided a copy of this letter to those individuals listed on your April 14th memo.

cc: Evan M. Shifren  
Michael D. Vogelstein, Esquire  
People's Counsel for Baltimore County  
Lawrence E. Schmidt, Zoning Commissioner  
Derek Propalis /Code Enforcement Officer  
Jeffrey Perlow /Code Enforcement Officer

MICROFILMED

## CIRCUIT COURT FOR BALTIMORE COUNTY

SUZANNE MENSCH, CLERK  
 COUNTY COURTS BUILDING  
 401 BOSLEY AVENUE  
 P.O. BOX 6754  
 TOWSON, MARYLAND 21285-6754

BALTO. COUNTY, MD.

Case Number 03-C-98-0027<sup>A</sup>☒ Civil☐ CriminalVs.  
SCHIFFEN EVAN MILES

03-C-98-

SCHIFFEN CINDY LU

002795

## SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

ARNOLD JABLON (~~Executive Director~~) (Director of PDM)  
 111 West Chesapeake Ave. Room 111 County Office Building  
 BALTO. COUNTY, MARYLAND 21204

YOU ARE HEREBY COMMANDED TO: ☒ Personally appear; ☒ Produce documents and or objects only☒ Personally appear and produce documents or objects;at 400 WASHINGTON AVE. Towson, MD. 21204 Room #48  
 (Place where attendance is required)

Basement of Old Courthouse

on WEDNESDAY the 06 day of MAY, 19 98, at 10:00 a.m./p.m.

YOU ARE COMMANDED TO produce the following documents or objects:

ALL RECORDS PERTAINING TO 12026 PARK HEIGHTS AVE. OWINGS MILLS MD  
 ZONING ISSUES (ZONING COMMISSIONS COPIES) Zoning Application 21117

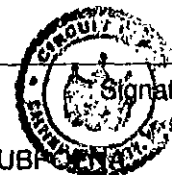
Subpoena requested by ☐ Plaintiff; ☒ Defendant; and any questions should be referred to: (410) 833-2886

MR. EVAN MILES SCHIFFEN 12026 PARK HEIGHTS AVE. OWINGS MILLS MD

(Name of Party or Attorney, Address and Phone Number)

Date Issued MAR 26 1998

CLERK



Signature &amp; Seal

## NOTICE:

- (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA
- (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
- (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d)

## SHERIFF'S RETURN

☐ —Served and copy delivered on date indicated below.☐ —Unserved, by reason of \_\_\_\_\_

Date: \_\_\_\_\_ Fee: \$ \_\_\_\_\_

Original and one copy needed for each witness

SHERIFF

MICROFILMED

Circuit Court for Balto County of MD Case No 03-C-98-000795  
Balto County of MD Shipens Cindy Evans (Hi-Pedible)  
 Name Shipens Cindy Evans Name  
 Street Address 12026-28 Park Heights Av Apt #  
 City Overing Mills, MD State MD Zip Code 21117 Area Code 410 Telephone 833 7884  
 Plaintiff Defendant

# AFFIDAVIT OF SERVICE (Private Process)

(Dom Rel 55)

I certify that I served Mr. James Hammersta at 8:45 a.m./p.m.  
 on 4/29/98, 19 98, at 4294 Wolfhill Rd Hampstead - MD  
 by delivering and leaving with Mr. James Hammersta  
 a copy of the Subpoena for May 6, 98 - 400 Washington - DOWSON MD 21201  
 which were previously filed with this Court. Attached is a copy of any summons ("process")  
 issued by the Court, the original of which I served upon the person served. I certify that I am over  
 eighteen (18) years of age and I am not the Plaintiff or the Defendant.

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are  
 true to the best of my knowledge, information, and belief.

4/29/98  
 Date

Jeffrey H. Carlan  
 Name of Server (signature)  
Jeffrey H. CARLAN  
 Name of Server (printed or typed)  
6907 DORSET PLACE BALTO MD 21205  
 Street Address City State Zip Code of Server  
(410) 358-5933  
 Area Code Telephone Number of Server

RECEIVED  
 COUNTY BOARD OF APPEALS  
 98 MAY -6 AM 9:14

MICROFILMED

## CIRCUIT COURT FOR BALTIMORE COUNTY

SUZANNE MENSCH, CLERK  
 COUNTY COURTS BUILDING  
 401 BOSLEY AVENUE  
 P.O. BOX 6754  
 TOWSON, MARYLAND 21285-6754

BALTO County MD.

Case Number 03-C-98-002795

☒ Civil☐ Criminal

Shifren EVAN MILES

Shifren CINDY LU  
 Hi-CALIBER AUTO. INC.

## SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

JAMES HAMMERSLA, 2601

4794 WOLF HILL Rd.  
 CEDAR HURST Drive  
 NAMPSTEAD, MD.YOU ARE HEREBY COMMANDED TO: ☐ Personally appear; ☐ Produce documents and or objects only  
☒ Personally appear and produce documents or objects;at 400 WASHINGTON AVE. TOWSON MD-21204 Room #48 (BASEMENT of  
 (Place where attendance is required)  
 OLD Courthouse

on WEDNESDAY the 06 day of MAY, 19 98, at 10:00 a.m.p.m.

YOU ARE COMMANDED TO produce the following documents or objects:

ALL DOCUMENTS PERTAINING TO YOUR BANK-PICTY IN or BETWEEN  
 1985/1988?Subpoena requested by ☐ Plaintiff; ☒ Defendant; and any questions should be referred to:MREVAN Shifren 12026 PARK Heights AVE, Owings Mills MD.  
 (Name of Party or Attorney, Address and Phone Number) 21117

Date Issued APR 13 1998

CLERK

Signature &amp; Seal

## NOTICE:

- (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
- (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
- (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d)

## SHERIFF'S RETURN

- ☐ —Served and copy delivered on date indicated below.  
☐ —Unserved, by reason of

Served by [Signature]

SHERIFF

Date: 4/29/98 Fee: \$

Original and one copy needed for each witness

MICROFILMED



Circuit Court for Balto Co Case No. D3-C-98-00279 SAN  
Balto Co of MD City or County  
Shyren, Evan Myles - Shyren Crilly, Jr Name  
120216-28 Park Heights AV Street Address  
Quincy Mills MD 21119 City State Zip Code  
410 583-2606 Telephone  
Plaintiff vs. Defendant

# AFFIDAVIT OF SERVICE (Public Process) (Dom Rel 55)

I certify that I served Wayne Fox at 8:30 (a.m.) p.m.  
on April 21, 19 98, at R.R.2 Box 1628 - Pocky Rd - R.Rodberts - PA - 17329  
by delivering and leaving with Wayne Fox  
a copy of the May 6, 98 - At 10AM - At 400 Washington AV - Towson, MD 21204 - RM # 48  
which were previously filed with this Court. Attached is a copy of any summons ("process")  
issued by the Court, the original of which I served upon the person served. I certify that I am over  
eighteen (18) years of age and I am not the Plaintiff or the Defendant.

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are  
true to the best of my knowledge, information, and belief

April 23, 98 Date  
Jeffrey H. Caplan Name of Server (Signature)  
Jeffrey H. Caplan Name of Server (Printed or Typed)  
6907 Darset Place Balto MD 21215 Street Address City State Zip Code of Server  
(410) 358-5933 Area Code Telephone Number of Server

RECEIVED  
COUNTY BOARD OF APPEALS  
MAY 6 - 98  
AM 9:14

MICROFILMED

## CIRCUIT COURT FOR BALTIMORE COUNTY

SUZANNE MENSCH, CLERK  
 COUNTY COURTS BUILDING  
 401 BOSLEY AVENUE  
 P.O. BOX 6754  
 TOWSON, MARYLAND 21285-6754

Baltimore County, MD

Case Number 03-C-98-002745AN  
☒ Civil ☐ Criminal

Shifren, Evan Myles  
Shifren, Cindy Sue  
At - Paliber Auto Inc

## SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

Wayne Fox  
R.R. 2 Box 2628 - Rocky Rd. Brookhollow PA. 17329

YOU ARE HEREBY COMMANDED TO: ☒ Personally appear; ☐ Produce documents and or objects only

☐ Personally appear and produce documents or objects;

at 400 Washington Ave - Towson, MD. 21204  
 (Place where attendance is required)

Rm # 48 - Basement of Court House

on Wednesday the 06 day of May, 1998, at 10 a.m./p.m.

YOU ARE COMMANDED TO produce the following documents or objects:

Subpoena requested by ☐ Plaintiff; ☒ Defendant; and any questions should be referred to:

Mr & Mrs. Evan Shifren - 12026-28 Park Heights Ave - Owings Mills - MD  
 (Name of Party or Attorney, Address and Phone Number) (410) 833-2886  
21117

Date Issued

APR 20 1998

CLERK

Signature & Seal

## NOTICE:

- (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.  
 (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.  
 (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d)

## SHERIFF'S RETURN

- ☐ —Served and copy delivered on date indicated below.  
☐ —Unserved, by reason of \_\_\_\_\_

Date: \_\_\_\_\_ Fee: \$ \_\_\_\_\_

SHERIFF

Original and one copy needed for each witness

MICROFILMED

Circuit Court for Balto County

Case No. 03-C-98-00279.51A

Balto County of MD  
Name

Evan Shyfer & Hi-Caliber Auto Inc  
Name

Street Address

2026 Park Heights Av  
Street Address

City State Zip Code Area Code Telephone

Owings Mills, MD 21117 (410) 853-2826  
City State Zip Code Area Code Telephone

Plaintiff

Defendant

### AFFIDAVIT OF SERVICE (Private Process)

(Dom Rel 55)

I certify that I served Mr. George Breschi at 10:45 a.m./p.m.  
on 4/29/98, 1998, at 10803 Royal New & Cockeysville MD  
by delivering and leaving with Mr. George Breschi  
a copy of the Subpoena for May 6, 98 At 10AM - 400 Washington Av-Bowson, MD. 21204  
which were previously filed with this Court. Attached is a copy of any summons ("process")  
issued by the Court, the original of which I served upon the person served. I certify that I am over  
eighteen (18) years of age and I am not the Plaintiff or the Defendant.

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are  
true to the best of my knowledge, information, and belief.

4/29/98  
Date

Jeffrey H. Caplan  
Name of Server (signature)  
Jeffrey H. Caplan  
Name of Server (printed or typed)  
6907 Dorset Place BALTO MD 21215  
Street Address City State Zip Code of Server  
(410) 358-5933  
Area Code Telephone Number of Server

RECEIVED  
COUNTY BOARD OF APPEALS  
98 MAY -6 AM 9:14

MICROFILMED

## CIRCUIT COURT FOR BALTIMORE COUNTY

SUZANNE MENSCH, CLERK  
COUNTY COURTS BUILDING  
401 BOSLEY AVENUE  
P.O. BOX 6754

TOWSON, MARYLAND 21285-6754

BALTO. County. ~~MD~~

Case Number 03-C-98-002795AN

(X) Civil

( ) Criminal

Shifren <sup>vs.</sup> Evan Myles

Shifren Cindy Lee

Hi-Catber Auto Inc

## SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

\* Mr. GEORGE BRESCHI  
409 WASHINGTON AVE SUITE 600 Towson MD 21204

YOU ARE HEREBY COMMANDED TO: ☒ Personally appear; ( ) Produce documents and or objects only  
(☒ Personally appear and produce documents or objects;

at 400 Washington Ave - Towson, MD - 21204 RM # 48  
(Place where attendance is required)

Basement of Old Court House  
on Wednesday the 06 day of MAY, 19 98, at 10 a.m.

YOU ARE COMMANDED TO produce the following documents or objects:

12026-28 PARK HEIGHTS AVE OWINGS MILLS MD 21117, ~~ALL DOCUMENTS PERTAINING TO~~  
THE KOCH ESTATE up until THE DAY IT WENT UP FOR AUCTIONS.

Subpoena requested by ( ) Plaintiff; (☒ Defendant; and any questions should be referred to:

Mr. Evan Myles Shifren - 12026 Park Heights Ave - Owings Mills - MD - 21117  
(Name of Party or Attorney, Address and Phone Number) (410) 833-2886

Date Issued APR 13 1998

CLERK

Signature &amp; Seal

## NOTICE:

- (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
- (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
- (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d)

## SHERIFF'S RETURN

- ( ) —Served and copy delivered on date indicated below.  
( ) —Unserved, by reason of \_\_\_\_\_

Date: \_\_\_\_\_ Fee: \$ \_\_\_\_\_

SHERIFF

Original and one copy needed for each witness

MICROFILMED

Circuit Court for BALTO. County Case No. 03-C-9800279  
BALTO. CO. MD. Name EVAN GINDY SHIEN H. GH CALIBER INC  
Street Address Apt # vs. 12026-28 Park Heights Ave  
OWINGS MILLS MD 21117 (410) 233 2836  
City State Zip Code Area Code Telephone  
Plaintiff Defendant

**AFFIDAVIT OF SERVICE**  
**(Private Process)**  
(Dom Rel 55)

I certify that I served Stanley Rockkind of NBS INC. at 12:25 a.m./p.m.  
on 4/16/98, 19 98, at 5616 Park Heights Ave. BALTO CITY 21215  
by delivering and leaving with Stanley Rockkind  
a copy of the SUBPOENA for MAY 6 1998 AT 10:00 AM RM 418  
which were previously filed with this Court. Attached is a copy of any summons ("process")  
issued by the Court, the original of which I served upon the person served. I certify that I am over  
eighteen (18) years of age and I am not the Plaintiff or the Defendant.

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are  
true to the best of my knowledge, information, and belief.

4/16/98  
Date  
[Signature]  
Name of Server (signature)  
Jeffrey H. CURAN  
Name of Server (printed or typed)  
6907 Dorset Place BALTO. MD. 21215  
Street Address City State Zip Code of Server  
(410) 358-5933  
Area Code Telephone Number of Server

98 MAY -6 AM 9:14  
RECEIVED  
COUNTY BOARD OF APPEALS

MICROFILMED

CIRCUIT COURT FOR BALTIMORE COUNTY

SUZANNE MENSCH, CLERK  
COUNTY COURTS BUILDING  
401 BOSLEY AVENUE  
P.O. BOX 6754  
TOWSON, MARYLAND 21285-6754

Baltimore County of MD

Case Number 03-C-98-00219 SAN

☒ Civil

☐ Criminal

Evan Myles Shifren vs Shirley Ann Shifren  
Hi-Caliber Auto, Inc

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

X Mr. Stanley Rockkind of U.B.S. INC  
12026-28 Park Heights Ave  
Baltimore, MD 21209

YOU ARE HEREBY COMMANDED TO: ☐ Personally appear; ☐ Produce documents and or objects only  
☒ Personally appear and produce documents or objects;

at 400 Washington Ave - Towson, MD 21204 / RM # 48  
(Place where attendance is required)

in the Basement of Old Court House

on Wednesday the 6 day of May, 1998, at 10 a.m/p.m.

\* YOU ARE COMMANDED TO produce the following documents or objects: 12026-28 PARK HEIGHTS AVE.  
Any + all Documents pertaining to Zoning STATUS + Sale of Property to SHIFREN  
AND TENANT prior to the SHIFRENS (# Orig. Copy From Zoning for Expansion + Acknowledg  
Subpoena requested by ☐ Plaintiff; ☒ Defendant; and any questions should be referred to: DE THE NON-CON FORMING USE in 1989

Mr. Evan Myles Shifren - 12026-28 Park Heights Ave - Owings Mills - MD 21117  
(Name of Party or Attorney, Address and Phone Number)

Date Issued APR 13 1998

CLERK

Signature & Seal

NOTICE:

- (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
- (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
- (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d)

SHERIFF'S RETURN

- ☐ —Served and copy delivered on date indicated below.  
☐ —Unserved, by reason of \_\_\_\_\_

Date: 4-16-98 Fee: \$  
12:25 PM

Original and one copy needed for each witness

SHERIFF

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMO

DATE: April 14, 1998

TO: Kathleen C. Bianco, Administrator  
Board of Appeals (M.S. 2013)

FROM: Arnold Jablon, Director  
Department of Permits and Development Management.

RE: Case No. 97-303-SPH (12026-28 Park Heights Ave.)  
Even M. Shifren/ Hi-Caliber Towing, Inc.

In response to the attached subpoena relative to the upcoming hearing on May 6, 1998, please be advised that the following code enforcement officers will appear on my behalf to present the requested documents/records and if need be, to testify:

1. Mr. Derek Propalis
2. Mr. Jeffrey Perlow

Mr. Lee Thompson of the County Law Office has indicated that the substitution of these officers complies with the law, based on the wording in the subpoena. In addition, Mr. Propalis and Mr. Perlow have a detailed knowledge about the history of this case.

If you have any questions, you may reach these officers or their supervisor at (410) 887-3352.

AJ/jp/lmh

Attachment

c: Evan M. Shifren  
Michael D. Vogelstein  
People's Counsel of Balto. County  
Lawrence Schidmt, Zoning Commissioner  
Derek Propalis, Code Enforcement Officer  
Jeffrey Perlow, Code Enforcement Officer

*Call Cct 4/16 -  
What is Cct  
Case no. ref'd ?  
De novo from  
Subpoena District  
Cup Suzanne w/  
Cct # - not ours (?)*

8!

RECEIVED  
COUNTY BOARD OF APPEALS

MICROFILMED

April 23, 1998

Dear Kathleen C. Bianco, Administrator  
Board of Appeals (M.S. 2013)

RE: Case No: 97-303-SPH (12026-28 Park Heights Av)  
Evan M. Shifren/Hi-Caliber Towing, Inc.

In response to the inner office memo, from  
Arnold Jablon, ZADAM. It will be unacceptable for him not to attend  
the Board of Appeals. He has to be at this hearing. It is  
necceassary and relivant to our case. We have already subpoena  
Mr. Derek Proppalis. We do not need or want, Mr. Jeffery Perlow.

Thank You,  
Sincerely

Date: 4/28/98

Mr. Evan Shifren  
12026 Park Heights Ave  
Owings Mills, Md. 21117  
(410) 833-2886

*Copies to Michael Vegetarian  
sent to Mr. Shifren*

MICROFILMED



CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258  
Maryland Toll Free Number (800) 938-5802

12/24/98

Case Number: 03-C-98-005683 AE  
Date Filed: 06/05/98  
Status: Closed/Inactive  
Judge Assigned: To Be Assigned,

In The Matter Of: Evan Shifren, Et Al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	97303SPH

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Entered
PET 001	Shifren, Evan 12026 Park Heights Ave Owings Mills, MD 21117 Attorney: 0007398 Desser, Richard B	BT DO 09/17/98 06/05/98 Removed: 06/08/98
PET 002	Hi Caliber Towing & Auto Ltd 12028 Park Heights Ave Owings Mills, MD 21117	BT DO 09/17/98 06/05/98
ITP 001	Zoning Board	BT DO 09/17/98 06/05/98

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	06/05/98		

MICROFILMED

## DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
001000	Petition for Judicial Review	06/08/98	06/05/98	TBA	PET001		09/17/98	JM PH
002000	Certificate of Notice	07/27/98	07/23/98	TBA	000		09/17/98	DFF PH
003000	Protestants Motion to Dismiss Petition for Judicial Review with Exhibits. (Atty. for Protestants - Michael D. Vogelstein, 201 N. Charles Street, Suite 801, Baltimore, Md 21201, (410) 727-3000).	08/26/98	08/24/98	TBA	000		09/17/98	DFF PH
004000	Order dismissing case	09/17/98		TJB	000	Granted	09/17/98	PH PH
005000	Transcript of Record from Adm Agency *8 copies sent	09/17/98	09/17/98	TBA	000			JH JH
006000	Notice of Transcript of Record Sent	09/17/98	09/17/98	TBA	ITP001	09/17/98	09/17/98	JH JH
007000	Notice of Transcript of Record Sent	09/17/98	09/17/98	TBA	PET001	09/17/98	09/17/98	JH JH
008000	Notice of Transcript of Record Sent	09/17/98	09/17/98	TBA	PET002	09/17/98	09/17/98	JH JH
009000	Complete Docket Entries sent to Zoning Board	09/23/98		TBA	000			MJ MJ

## TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
1YRT	One Year Tickle (Jud	CLOSED	06/05/99	365	no	no	DAAA	D
35AS	35 Day Tickle After	CLOSED	07/13/98	35	no	no	CTOS	T
CTOS	Create Tickle On Ser	CANCEL	06/05/98	0	no	no	SERV	
NCDT	Notice Of Contemplat	CANCEL	10/03/98	120	no	no	CTOS	T
SLMR	Set List For Motions	CANCEL	09/15/98	22	no	no	MDIS	D
SLTR	Set List For Trial	CANCEL	09/17/98	0	yes	no	DTRA	D

## EXHIBITS

MICROFILMED

03-C-98-005683      Date: 12/24/98      Time: 10:48

Page: 3

Line #	Marked	Code Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
--------	--------	------------------	-----	------	----------	---------	--------

-----  
Offered By: IFP 001 Zoning Board,

000	B	RETURNING ZONING				0	
-----	---	------------------	--	--	--	---	--

NOT RECORDED

App-97 # 33

FILE#: 97-303-SPH  
NAME: Hi-Caliber Towing, Inc.  
STREET: Park Heights Ave., 1650' +/- S of c/l Walnut Ave.  
TYPE: SPH /existence of nonconforming fuel service (3)  
DISTRICT: 4;3  
DATE APPEALED: 9/10/97  
HRG. DATE: 5/06/98  
ORDER DATE: 5/15/98  
DECISION: Dismissed /G-Motion to Dismiss by Protestant  
CLOSED: 11/12/98  
UP: X

file returned from Cct. 4-6-99

MICROFILMED

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director                      DATE: November 12, 1998  
Permits & Development Management

FROM: Charlotte E. Radcliffe *WR*  
County Board of Appeals

SUBJECT: Closed File: 97-303-SPH  
Evan Shifren /Hi-Caliber Towing, Inc.

Since this case was dismissed in the Circuit Court, by Order dated September 17, 1998, we are hereby closing the Board's file in this matter.

The original file and exhibits were returned to your office by John Almond, Records Manager /CCT in September, 1998.

Attachment (CBA Case File No. 97-303-SPH)

MICROFILMED



3/18/96  
8  
96-1229

STATE OF MARYLAND  
Department of the Environment  
and Natural Resources  
Baltimore, Maryland  
(410) 381-3000

Case # 96-1229  
Date 3/18/96  
Status: OPEN  
Type: CIVIL  
Sub: CIVIL

Case # 96-1229  
Date 3/18/96  
Status: OPEN  
Type: CIVIL  
Sub: CIVIL

1. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

Page	Type of Case	Date	Case No.	Type of Case	Date	Case No.
1	Civil	3/18/96	96-1229	Civil	3/18/96	96-1229
2	Civil	3/18/96	96-1229	Civil	3/18/96	96-1229
3	Civil	3/18/96	96-1229	Civil	3/18/96	96-1229

2. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

3. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

4. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

5. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

6. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

7. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

8. The undersigned, being duly sworn, depose and say that the following is a true and correct copy of the original document as the same appears in the files of the Department of the Environment and Natural Resources, Baltimore, Maryland, in the case of the State of Maryland, Department of the Environment and Natural Resources, vs. [Name], et al., Case No. 96-1229.

MICROFILMED

To	From
C. Abou	C. Abou
Phone #	Phone #
Fax #	Fax #



State of Maryland  
**Comptroller of the Treasury**

**Motor Fuel Tax Unit**

Louis L. Goldstein Treasury Building, P. O. Box 1751  
Annapolis, Maryland 21404-1751

96 996  
Louis L. Goldstein  
Comptroller

Stephen M. Cordi  
Robert L. Swann  
Deputy Comptrollers

Richard A. Carey  
Administrator

3/6/96  
Y

March 4, 1996

Mr. Jeffrey N. Perlow  
Inspector  
Department of Permits & Development Mgt.  
111 West Chesapeake Avenue Room 113  
Towson, MD 21204

RE: Registration of Retail Service Station  
12026 Park Heights Avenue  
Baltimore, MD 21117

Dear Mr. Perlow:

The following information is in response to your request of March 1, 1996.

Our current Motor Fuel Inspection file shows a gasoline retail service station registration for Hi Caliber Towing & Auto, Inc., at 12026 Park Heights Avenue, Baltimore, MD 21117. This registration was effective January 12, 1993 and was last renewed June 8, 1995.

From July 3, 1986 to January 11, 1993, there was no motor fuel inspection registration with the Comptroller of the Treasury for the above referenced location.

From August 8, 1984 to July 2, 1986, the referenced location was registered under KHK, Inc., T/A Walnut Heights Amoco.

If I may be of further assistance, please let me know.

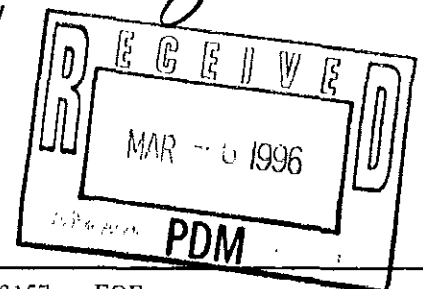
Sincerely,

Richard A. Carey  
Administrator

RAC:gs

MICROFILMED  
(410) 974-3131

Voice telephone:





3/26/96  
8

W. L. Goldstein  
Comptroller  
M. Cordi  
Swann  
Comptroller  
J. J. Briggs, Jr.  
Director

[illegible]

MICROFILMED

BALTIMORE OFFICE  
MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-539-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

January 7, 1998

**Hand Delivered**  
Kristine A. Howanski, Chairperson  
County Board of Appeals for  
Baltimore County  
Old Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

RE: Notice of Assignment  
Case No. 97-303-SPH  
In the Matter of: Evan M. Shifren

Dear Ms. Howanski:

I am in receipt of the above-referenced notice dated December 29, 1997 regarding the hearing which is scheduled for Wednesday, May 6, 1998.

Please be advised that neither myself nor the law firm of Levin & Gann, P.A. represents Mr. Shifren, or any other party to the appeal. While I represented Mr. Shifren and others before the Zoning Commissioner, I am no longer involved in the case, and I understand that the appeal was filed in proper person.

I respectfully request that you remove my name as counsel for the appellant. Thank you for your attention to this matter.

Very truly yours,

  
Julius W. Lichter

JWL:rdp  
cc: Evan M. Shifren  
Cindy L. Shifren  
Harvey Shifren  
Hi-Caliber Towing, Inc.

RECEIVED  
COUNTY BOARD OF APPEALS  
98 JAN -7 PM 2:50

MICROFILMED

BALTIMORE OFFICE  
MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-539-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
305 W CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

#303

ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

January 21, 1997

**Hand Delivered**

Mr. W. Carl Richards, Jr.  
Supervisor  
Zoning Review Section  
Department of Permits and  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
12026-28 Park Heights Avenue  
Hi-Caliber Towing, Inc.

*Drop-Off  
No Review  
1/21/97  
OK per WCR*

Dear Carl:

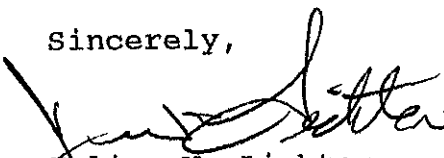
I have enclosed herewith the following:

1. twelve (12) copies of the Plat to Accompany the Petition for Special Hearing;
2. three (3) legal descriptions;
3. one (1) 200 foot scale zoning map;
4. one (1) aerial photograph; and
5. a check for \$250.00.

I am filing the enclosed via the "drop-off" procedure without a review of you or your staff in advance of filing. Please note that the subject property has been cited with a zoning violation notice with respect to the use of the property which the Special Hearing will resolve.

Please advise if you need additional information to process the Petition.

Sincerely,

  
Julius W. Lichter

JWL/rdp

MICROFILMED

2024

BALTIMORE OFFICE  
MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-539-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
LEVIN & GANN  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

GWEN

ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

March 4, 1997

**Hand Delivered**

Mr. Arnold Jablon, Director  
Department of Permits and  
Development Management  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: Case No.: 97-303-SPH  
12026 Park Heights Avenue

Dear Mr. Jablon:

I represent the Petitioner, Evan and Cindy Shifren, t/a Hi-Caliber Auto, Inc. in the above-captioned case and in Case No. SP 2866-96 in the District Court for Baltimore County. I am in receipt of a letter from Michael D. Vogelstein, Esquire to you in which Mr. Vogelstein requested another postponement of the above-captioned case.

The Petitioner strongly opposes Mr. Vogelstein's request for postponement. The Petitioner's opposition to the request stems from the Petitioner's desire to resolve an issue which is driven by the Protestants' efforts to cease the Petitioner's business operations and to eliminate the Petitioner's sole source of income.

The Petitioner has filed a Petition for Special Hearing for a determination of the Petitioner's rights under the Zoning Regulations which provide for a timely determination. A hearing on this Petition was scheduled for February 25, 1997. Pursuant to a request for postponement by Mr. Vogelstein, your office granted the request and rescheduled the hearing for March 25, 1997.

A determination of the Petitioner's rights under the Zoning Regulations has additional significance in light of proceedings which are pending in the District Court for Baltimore County seeking injunctive relief wherein my clients, Mr. and Mrs. Shifren, are Defendants. The District Court has scheduled a hearing in this related matter for March 26, 1997, and a postponement of the Hearing Officer's hearing would have a determinative effect on the District Court proceeding such that a postponement of the Hearing Officer's hearing should not be granted without an assurance of a postponement of the District Court hearing.

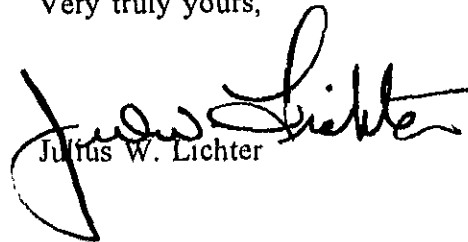
MICROFILMED

Mr. Arnold Jablon  
March 4, 1997  
Page 2

Due to the importance of the Hearing Officer's hearing with regard to a determination of the Petitioner's rights to the continued use of their property and the nature of Mr. Vogelstein's request, the Petitioner strongly opposes a postponement unless all parties and Baltimore County, with the concurrence and approval of the District Court, can agree upon a postponement in Case No. SP 2866-96.

I suggest that you meet with myself, Mr. Vogelstein and Lee S. Thomson, Assistant County Attorney, to confirm the hearing date for the above-captioned case, and I will send a copy of this letter to Mr. Vogelstein via telefax and to Mr. Thomson via hand delivery to expedite such a meeting. Please contact me upon receipt of this letter.

Very truly yours,



Julius W. Lichter

JWL/rdp

cc: Michael D. Vogelstein, Esquire  
Lee S. Thomson, Esquire  
James Thompson, Zoning Enforcement

MICROFILMED

BALTIMORE OFFICE  
MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-539-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

97-1133  
3/15/97  
88  
TO 68  
ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

March 14, 1997

**Hand Delivered**

Mr. Arnold Jablon  
Director  
Department of Permits and  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: 12026 Park Heights Avenue  
Hearing Schedule  
District Court for Baltimore County Case No.: SP 2866-96  
Zoning Commissioner's Case No.: 97-303-SPH

Dear Mr. Jablon:

I am writing to confirm our understanding regarding the scheduling of the above-captioned cases.

I understand that the request for postponement of the Zoning Commissioner's hearing which was requested by Michael D. Vogelstein, Esquire on March 3, 1997 on behalf of Protestants in the above-captioned matters has been granted. Additionally, you agreed to a postponement of the hearing before the District Court for Baltimore County in order to ensure that the District Court hearing will be rescheduled for a date sometime following the Zoning Commissioner's hearing having received a communication from Mr. Vogelstein that he did not oppose the District Court postponement.

I suggest Mr. Vogelstein and I have a conference call with Gwen Stephens of your office to schedule dates which are convenient to all of the interested parties after Case No. SP 2866-96. Thank you for your continued attention to this matter. *gle*

Very truly yours,

*Julius W. Lichter*  
Julius W. Lichter *ndg*

JWL/rdp

cc: Michael D. Vogelstein, Esquire (Via telefax)  
Mr. and Mrs. E. Shifren  
Lee S. Thomson, Esquire (Via hand delivery)  
Mr. James Thompson (Via hand delivery)  
Ms. Gwen Stephens (Via hand delivery)

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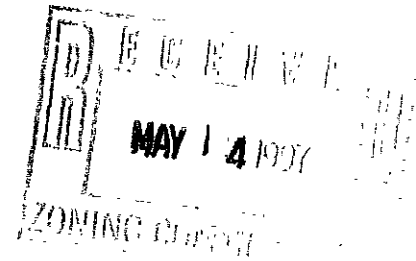
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LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

May 9, 1997



**Via Telefax**

Michael D. Vogelstein, Esquire  
201 North Charles Street  
Suite 301  
Baltimore, Maryland 21201

RE: Hi-Caliber Towing, Inc.  
12026 Park Heights Avenue  
Petition for Special Hearing  
**Postponement**

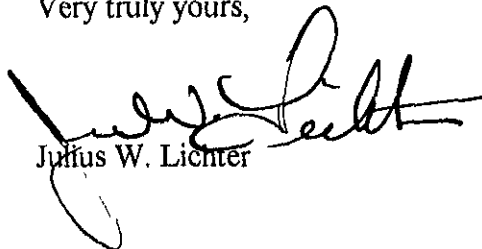
Dear Mr. Vogelstein:

On Wednesday, May 7, 1997, the Zoning Commissioner of Baltimore County contacted me to discuss a postponement of the above-captioned hearing **due to a conflict with his schedule.**

I advised the Zoning Commissioner that, because a conflict in his schedule necessitated the postponement, I was amenable to his request. I also advised the Zoning Commissioner that I would advise my clients of the postponement.

I received written confirmation of the postponement from the Zoning Commissioner today, and at his request, I am writing to notify you of the change in schedule. The hearing which was previously scheduled for Friday, May 16, 1997 has been rescheduled to **Thursday, May 22, 1997 at 9:00 a.m. in Room 106 of the County Office Building.** I have made arrangements to have the sign on the subject property which advertises the hearing changed to reflect the new hearing date and location. I expect that the sign will be changed today.

Very truly yours,



Julius W. Lichter

JWL/rdp  
cc: Lawrence E. Schmidt,  
Zoning Commissioner

MICROFILMED



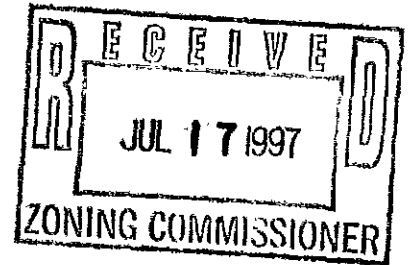
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MERCANTILE BANK & TRUST BUILDING  
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9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-539-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

July 17, 1997



**Hand Delivered**

Lawrence E. Schmidt  
Zoning Commissioner of  
Baltimore County  
County Courts Building  
Towson, Maryland 21204

RE: Petition for Special Hearing  
Mr. and Mrs. Shifren and Hi-Caliber  
Towing Service, Inc., Petitioners  
Case No. 97-303-SPH

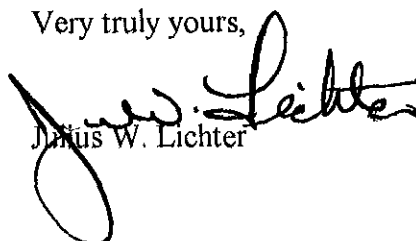
Dear Mr. Schmidt:

I am writing to set the record straight with regard to material misrepresentations that are contained within the pleadings filed by the Protestants in the above-captioned matter.

Throughout the Protestants' pleadings, Counsel for the unnamed Protestants misleads the Zoning Commissioner by stating that the Shifren's instituted previous proceedings in an effort to continue the nonconforming fuel service station and nonconforming service garage. In Paragraph 3 of the Protestants' Motion, Counsel blatantly misstates that Hi-Caliber Towing and Mr. Shifren "previously petitioned this Honorable Commission for a Special Hearing." I enclose herewith a copy of the Petition for Special Hearing in Case No. V-93-442-SPH that clearly indicates that ZADM instituted the previous proceedings which were then prosecuted by the Protestants in a failed attempt to terminate both the nonconforming fuel service station and nonconforming service garage.

Counsel's misleading statements, with knowledge aforehand of their falsity, are indicative of the deliberate and vehement manner in which the Protestants have hounded the Shifren's and every prior owner/operator to terminate the historic business enterprise at 12026-28 Park Heights Avenue.

Very truly yours,

  
Julius W. Lichter

cc: Evan & Cindy Shifren  
Michael D. Vogelstein, Esquire

MICROFILMED

# Petition for Special Hearing

Case #: V-93-442-SPH  
to the Zoning Commissioner of Baltimore County

for the property located at 12026 Park Heights Avenue

which is presently zoned R.C.5

This Petition shall be filed with the Office of Zoning Administration & Development Management, Baltimore County hereby petitions for a Special Hearing under Sections 26-3 and 26-121(a) of the County Code and Section 500.6 of the Zoning Regulations of Baltimore County, for the Zoning Commissioner to conduct a hearing involving a violation or alleged violation or non-compliance with any zoning regulations or order issued by the Zoning Commissioner, Board of Appeals or Court, or for the proper interpretation thereof, more specifically:

Section number(s): 26-119 Baltimore County Code; 101 "Nonconforming Use"; 102.1; 104; 1A04 Baltimore County Zoning Regulations.

Nature of violation(s): Whether there does exist abandonment or discontinuance of a non-conforming automotive service station with accessory vehicle repair service, as previously granted in Special Hearing 85-167-SPH on January 22, 1985.

I do solemnly affirm that the contents stated above are correct to the best of my knowledge, information and belief.

6-22-93  
Date

[Signature]  
Office of Zoning Administration Representative

## SUMMONS

ISSUED TO: Hi-Calber Towing, Ltd.  
C/O Lee N. Sachs, Resident Agent  
ADDRESS: 341 N. Calvert Street  
Baltimore, MD 21202

To appear and testify in the matter of an alleged zoning violation or for the purpose of a proper interpretation of the zoning regulations or order of the Zoning Commissioner, Board of Appeals or Court.

Hearing Date: July 13, 1993 Time: 11:00 am/pm Location: Rm. 118, Old Courthouse

[Signature]  
Zoning Commissioner for Baltimore County

Please be advised that your failure to appear at the date, time and location stated above could result in your attachment.



OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

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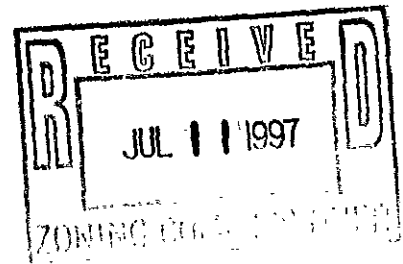
BALTIMORE OFFICE  
MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-539-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

JULIUS W. LICHTER

July 11, 1997



**Hand Delivered**

Lawrence E. Schmidt  
Zoning Commissioner of  
Baltimore County  
County Courts Building  
4th Floor  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
Evan and Cindy Shifren/Hi-Caliber Towing, Inc.  
12026 Park Heights Avenue  
Case No. 97-303-SPH

Dear Mr. Schmidt:

Enclosed pursuant to your request on May 22, 1997, you will find the Petitioners' Pre-Trial Memorandum regarding the *res judicata* issue which has been raised.

I know that the Shifren's intend to have numerous supporters of their Petition in attendance at the hearing in this case. I request that a ruling on this preliminary issue be made at an early date and that counsel be advised of a convenient date for a hearing on this issue on a date earlier than August 6, 1997 which is the date scheduled for the hearing on the merits.

Thanking you for your consideration, I remain

Very truly yours,

(Julius W. Lichter)

JWL/rdp

Enclosures

cc: Evan and Cindy Shifren  
Michael D. Vogelstein, Esquire

MICROFILMED

2/12/97  
8  
97-608  
MICHAEL D. VOGELSTEIN

ATTORNEY AT LAW

201 NORTH CHARLES STREET

SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

February 7, 1997

W. Carl Richards, Jr.  
Baltimore County Department of Permits  
and Development Management  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Drop-Off Petition (Item #303)  
12026-27 Park Heights Avenue  
4<sup>th</sup> Election District

Dear Mr. Richards:

Please be advised that I represent numerous interested parties in the above entitled matter. As you may be aware, this matter was fully litigated in the Circuit Court for Baltimore County and Hi-Caliber Towing, Inc.'s Appeal Petition was denied.

I have enclosed copies of Judge Fader's Memorandum Opinion and Judgement Affirming the Board of Appeals of Baltimore County denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026 Park Heights Avenue. Pursuant to Judge Fader's Order, I am requesting you dismiss the Petition for Special Hearing upon the basis of Res Judicata.

I will be unavailable to attend the Special Hearing scheduled on February 25, 1997 at 2:00 p.m. due to a previously scheduled Deposition in the matter of Quamina vs. Linen, et al., Circuit Court for Baltimore County case number 03-C-96-003053 MT, said matter previously scheduled on February 25, 1997 at 2:30 p.m., per attached copy.

In the event you are unwilling to dismiss the Special Hearing, kindly postpone the Hearing so that I may attend and provide additional documentation and/or testimony in opposition to the Petition.

MICROFILMED

February 7, 1997  
W. Carl Richards, Jr.  
Page 2

Thanking you in advance for your anticipated cooperation and consideration, I remain,

Very truly yours,



Michael D. Vogelstein

MDV/ldw

cc: Julius W. Lichter, Esq.  
Don Roscoe, Supervisor of Zoning Review

Enclosures

MICROFILMED

IN THE MATTER OF

N.B.S., INC. AND HI-CALIBER

TOWING, INC./OWNER/OPERATOR

\*

\*

\*

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

CASE NO. V 93-442-SPH

\* \* \* \* \*

MEMORANDUM OPINION AND JUDGMENT  
AFFIRMING BOARD OF APPEALS

This court affirms the opinion of The Board of Appeals of Baltimore County denying for the use of a nonconforming service station to Hi-Caliber Towing, Inc. at 12026 Park Heights Avenue. It is so ORDERED by the Circuit Court for Baltimore County this 28th day of December, 1995.

A.

The parties agree that the real property at 12026 Park Heights Avenue had a nonconforming use as a service station for many years. At issue is whether that nonconforming use was lost due to the fact the nonconforming use had been abandoned or discontinued for a period of one year or more. The law is as follows:

Section 104.1 of the Baltimore County Zoning  
Regulations (BCZR)

"A nonconforming use...may continue...provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more...such nonconforming use shall terminate."

There was conflicting evidence before the Board of Appeals as to whether there was abandonment in use of the premises. The Board of Appeals decided, on the basis of this conflicting evidence, the more credible evidence showed that despite the issuance of a trader's

MICROFILMED

97-965

**MICHAEL D. VOGELSTEIN**

ATTORNEY AT LAW

201 NORTH CHARLES STREET

SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

March 3, 1997

Baltimore County Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, MD 21204  
Attn: Arnold Jablon

RE: Case No.: 97-303-SPH  
12026-28 Park Heights Avenue

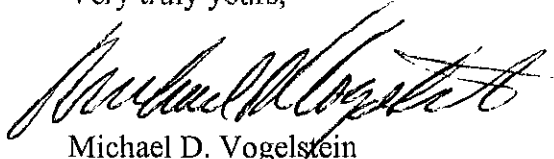
Dear Mr. Jablon:

Please be advised that this is a Request for Postponement of the above entitled matter as I will be on a previously scheduled vacation out of town from March 23, 1997 to April 1, 1997.

Kindly contact the undersigned prior to rescheduling this matter so that a mutually convenient hearing date can be arranged for all parties.

Your cooperation in this in this matter is greatly appreciated.

Very truly yours,



Michael D. Vogelstein

cc: Julius Lichter, Esq.

MICROFILMED

**MICHAEL D. VOGELSTEIN**

ATTORNEY AT LAW

201 NORTH CHARLES STREET

SUITE 801

BALTIMORE, MARYLAND 21201

(410) 727-3000

FAX (410) 727-0061

April 20, 1998

Kathleen C. Bianco  
County Board of Appeal  
of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

98 APR 21 PM 2:01

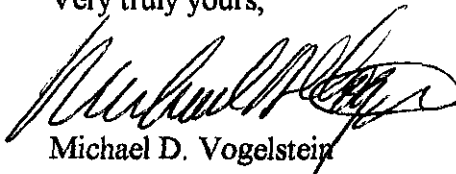
RE: Case No.: 97-303-SPH  
In The Matter Of: Evan M. Shifren-Legal Owner;  
Hi-Caliber Towing, Inc.

Dear Ms. Bianco:

Please find enclosed the Protestants' Motion to Dismiss Appeal, Memorandum of Law in Support of Motion to Dismiss Appeal and all supporting documentation to be filed in the above entitled matter.

Thanking you in advance for your anticipated cooperation and consideration, I remain,

Very truly yours,



Michael D. Vogelstein

MDV/km

Enclosures

MICROFILMED



**HELP!!**

**SAVE THIS HISTORIC 1930's GAS STATION**

*Hi-Caliber Towing & Auto Service is being forced to close. We want to continue being of service to the community and save this historic building. WE NEED YOUR HELP to petition to continue operating our business. Call or stop by anytime daily 8am-5pm to learn how you can help save our business & this historic landmark. WE NEED THE COMMUNITY'S COOPERATION. Thank you, Hi-Caliber Auto Service*

**Hi-Caliber**  
Towing & Auto Service Inc.  
(410) 833-AUTO • (833-2886)  
Located on Park Heights Ave. — (between Walnut & Caves Rd.)  
5104328

**UNIQUE DIFFERENT DESIGNS** FOR the kitchen & bath. Receive a free hotwater dispenser, hand-crafted glass with an artistic approach. We carry merchandise not seen anywhere. Accent Kitchen and baths, 654-9777

Advertising gets results!

**FORD RIDING LAWN TRACTOR**-11hp, 38" deck, good condition, \$800/ best offer. 410-561-2334 leave message.

**RECONDITIONED WASHERS, DRYERS, REFRIGERATORS, RANGES**, Freezers. Large display! \$89 and up! Guaranteed, delivery available, MC/ VISA, Kay's, 512 N. Crain (opposite Empire Towers Building), 410-787-9898.

**FURNITURE, NEW**- All rooms. Will sacrifice, can deliver. 410-418-1717. (Hobbs).



**ADOPTION**- A loving childless couple wishes to adopt a baby. Willing to pay legal/ medical expenses. Call Phil and Cindy collect, 202-686-0369.

**CHILDCRAFT CRIB, APRICIA STROLLER**- Mattress and youthbed. \$300. 410-653-7815

**PENNSAVER, PENNSAVER!**

**BRASS BEDS**- With orthopedic firm mattress sets. New, still boxed. Cost \$1,000+. Sell queen \$300/ king \$385. 410-792-8379. (Jonas)



**ADOPTION**- We are a loving, childless couple wishing to adopt an infant. Willing to pay legal and medical expenses. Please call Vicki and Ed collect, anytime, 1-410-414-2477.

**MOVING SALE**- Bedroom sets, dining room table and chairs, skis, ladies 10 speed bike, sleep sofa... lots more! 410-653-7461.

**MATTRESS SETS**- New Luxury Sealy/ Serta, retail \$899- \$1,299, sell \$199. 410-418-0059. (Johnson).

**DEBT CONSOLIDATION** Cut payment up to 60%. 24-hour approval. 1-800-511-6866 (extension 92).

**GRAND OPENING LESS LABEL**. Brand name ladies fashions at 1/3 off retail cost. We are located in Reisterstown next to SRI Shoe Warehouse, Friday- Sunday, 833-3019.

**DAYBED, WHITE IRON/BRASS**, excellent condition, without mattresses. \$75. 410-484-4718.

**AQUARIUM**-55 gallon, under gravel filter system. \$100/ offer 410-665-2275.

**DINETTE SET (GLASS/ BRASS)**, \$125; Living room tables (2 end, 1 coffee), \$150. New condition 653-6241.

**BATHTUB SEAT**, \$15; Walker, \$5. Good condition. 665-4944.

**LEBAN SNARE DRUM** includes case, stand, \$100. 296-3927

**GOLF CLUBS**, 11 woods, two irons, \$5 each. 931-3911.

**ELECTRIC ORGAN**-Entertainment features. Great condition. Best offer. Call for more information at 410-687-5622.

**COMPUTER PARTS**-For upgrade, show prices. Call, 426-4103.

**GRACO STROLLER/PLAYPEN**, balloon pattern. Both in great condition. \$75 takes all. 663-3192.

**HEADBOARD, TRIPLE DRESSER** with mirror, very good condition, \$225. 678-1833, pager.

**MICROWAVE/CONVECTION OVEN**, \$70; Peacock wicker chair, \$40. 426-1125.

**"IT'S A BOY", "IT'S A GIRL"** weather resistant lawn signs, 25"x39", \$10/ each. 529-3257.

**DINING ROOM TABLE**, four chairs and hutch, mello cherry, \$200/ offer. 410-687-6630.

**NEW YORK BROADWAY SHOWS**-We have the shows you want to see! Including The Phantom of the Opera. We also have daily trips to Atlantic City. Hunt Valley Motor Coach, 584-7377

## COMMUNITY NEWS

COMING EVENTS

### Homesharing

St. Ambrose Homesharing brings together homeowners who have extra space and people looking for affordable living situations. Applicants are interviewed and references are checked. Information: 366-6180.

### Notre Dame Mother House

The School Sisters of Notre Dame Mother House, Bel-lona Ave. and Charles St., will hold a day of teaching, discussion and prayer on May 18 from 10:00 a.m. to 4:00 p.m. Participants should bring a bag lunch. Registration is required: 687-6011.

### "Ocean" Camp

The Baltimore County 4-H Residential Camp for ages 8 to 13 will be held from July 22 to 26. Camp will focus on the ocean and will include activities featuring water quality, underwater volcanoes and the Bay. Registration forms: 666-1025.

### Screenings for Children

Free screenings for preschool children with speech; language or hearing problems will be held on May 18 from 9:00 a.m. to noon at the Boumi Temple, 4900 N. Charles St. Information: 243-6034.

### Sculpture Class

The Northwest Senior Center will offer a modern sculpture class beginning on June 7. Slide lectures will give students the basis for creating their own sculptures. Fee. Information: 358-6856.

Deadline Monday Noon For The Following Week (Mail In Only)

### Credit Card & Check Guarantee Services



Accept all major credit cards & ATM cards or get your own private label card! And the best check guarantee, anywhere! Improve your cash flow, today! Let NCC qualify your business for our lowest rates. In-home, mail/phone order, service, etc., new business, no previous credit history and problematic credit may be no problem. Call today!

**Nationwide CreditCard Center**

(888) 240-BANK

MICROFILMED

NAME

ADDRESS

Cindy R. Ship (Owner)  
 BOB + LINDA KLEIN  
 DON GORMAN  
 Jody + Kelly Rhoten  
 Adam Feddes  
 HARVEY SHIFREN  
 Michael R. Sturm  
 Judith M. Sturm  
 Manetta M. Kraus  
 Jeffrey H. Cygan  
 Richard A. JEFFERSON  
 Wayne A. For  
 ROBERT MAGNESS  
 RYAN HILLER  
 CONRAD GRANONG  
 Evan M. Shifren  
 Jeffrey Zickberg  
 S. [Signature]  
 Charles Runkla

12026 Park Heights Ave  
 12007 Park Heights Ave  
 12111 PARK HIGTS AVE  
 12157 PARK HIGTS AVE  
 4118 Kinsway Ave.  
 11406 BELFIELD ROAD  
 12137 Park Hgts Ave 21117  
 12145 PK Hgts Ave 21117  
 12133 PK Hgts Ave. 21117  
 6907 Cassin Place Bldg. 21245  
 4819 Burkhead GYLDON 211136  
 P.A.  
 318 TIMBERLOVE RD. ABSTERSTON, 21136  
 2210 SHADED BROOK DR. OWINGS MILLS MD 21117  
 404 N Post ST Balt 21117  
 12026 PARK HEIGHTS AVE Owings Mills, MD 21117  
 5 Huntmeadow CT. Owings Mills MD 21112  
 5616 Park Hgts  
 5616 Park Hgts



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Alexandra McMahon

Valleys Planning Council, 212 Washington Ave, Towson MD 21286

80818111 DICK & GAYLE NEWMAN

7 CAROLYN COURT OWINGS MILLS MD 21117

654-1597 Marilyn + David LARACH

3005 SUSANNE COURT OWINGS MILLS MD 21117

Paj Nathanson

12119 PARK HEIGHTS AVE

410-356-6704 Loretta P. Reynolds

11962 PARK HEIGHTS AVE OWINGS MILLS, MD 21117

410-356-6766 NANCY R. SEAL

11958 PARK HEIGHTS AVE. OWINGS MILLS, MD, 21117

CARL L. NATHANSON

12119 PARK HEIGHTS AVE 21117

Eugene O. Reynolds

11962 PARK HEIGHTS AVE 21117

JAMES F. SEAL, JR.

11958 PARK HEIGHTS AVE, 21117

MICROFILMED

# **NOTICE**

## **COMMUNITY ALERT**

RESIDENTS OF

**HUNTINGTON, WORTHINGTON WOODSYDE, FOX CHASE, CHESTNUT RIDGE,  
PARK HEIGHTS, TIMBER VALLEY**

### **A COMMERCIAL TOWING AND AUTO AND TRUCK REPAIR BUSINESS IS ATTEMPTING TO MOVE INTO YOUR COMMUNITY!**

**HI-CALIBER TOWING, INC.** is requesting the Baltimore County Zoning Board to grant them a **Non-Conforming Use** so that they may operate a **commercial** towing and auto and truck repair business on their **residentially-zoned property** located at 12026-28 Park Heights Avenue, Owings Mills, MD.

The sound of tow trucks traveling up and down the Park Heights corridor, along with the noise which will result from the repair of trucks and automobiles during all hours of the day and night, will greatly disturb the tranquility that we presently enjoy in our community.

A towing operation, including the unsightly storage and repair of broken down vehicles, will serve to benefit only the owner of the business, while it will be an extreme detriment to our community. Not only will the peace of our community be continuously disturbed, but the presence of such a business will also have a **negative** effect on the value of our homes and properties.

**PROTECT YOUR HOME AND COMMUNITY!** It is YOUR responsibility to **oppose and protest** Hi-Caliber, Inc.'s request to operate a commercial towing and auto and truck repair business in our residential community. Your attendance is vital at the **special hearing** before the Zoning Commissioner on **Thursday, May 22, 1997 at 9:00 a.m.** Fourth Floor Hearing Room, County Courts Building, 401 Bosley Avenue, Towson, MD 21204.

If it is impossible for you to attend this hearing, please send a letter immediately, expressing your opposition to Hi-Caliber's request to:

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson, MD 21204

Please refer to case number 97-303 SPH (Item 303)

**MICROFILMED**

For information concerning this hearing, call (410) 887-3391

Michael B. Fox  
12215 Park Heights Ave.  
Owings Mills, MD 21117  
Home Phone 410-356-7488

May 18, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson, MD 21204

97-303  
Hi Caliber

Zoning Commissioner,

In response to a flyer left on my mailbox, I would like to express my feelings on the zoning of the property located at 12026-28 Park Heights Ave. (case number 97-303 SPH item 303). I will be unable to attend the meeting on May 22 because of work. If at all possible please use my opinion in your decision.

I have lived in this area all my life and it is a wonderful peaceful place. If someone wants to use his or her property to better themselves and to bring a service that could help our community, I encourage that. I feel that it would be nice to have someone right down the street to help me if my car will not start in the morning.

Please allow HI-CALIBER TOWING, INC. to set up there shop and towing business on Park Heights Ave.

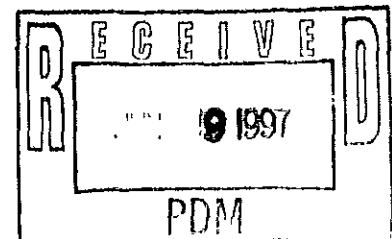
If at all possible please inform those responsible of putting out the ignorant and arrogant flyer that was put on my mailbox, that not all the residence living in this area are opposed to someone trying to reach there American dream of owning there own business. And about the sounds of tow trucks running up and down the Park Heights Corridor, please inform them that Park Heights Ave. is a state road, not private, therefore tractor trailers and other heavy equipment use this road all the time.

If there are any questions or concerns in regards to my opinion, please do not hesitate to call me.

Sincerely,

Michael B. Fox

Case number 97-303 SPH (item 303)



# facsimile

TRANSMITTAL

---

**to:** Baltimore County Zoning Commissioner  
Att: Mr. Lawrence Schmidt  
**fax #:** 4108873468  
**re:** Case # 97-303 SPH (Item 303)  
**date:** May 21, 1997  
**pages:** 1, including this cover sheet.

My name is Richard Davidson and I reside at 6 Huntmeadow Court in Owings Mills, Md 21117

I have lived in the neighborhood in which Hi-Caliber is located since November of 1978

In the span of 18 years I have had need to make use of the services of Hi-Caliber and its previous owners on many occasions.

I am writing in support of Hi-Caliber's application for a zoning exception.

*Richard Davidson*

From the desk of

**Richard S. Davidson**  
President

The Davidson Transfer & Storage Co  
6600 Frankford Ave  
Baltimore, Maryland 21205

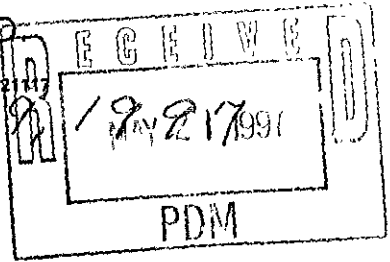
410-486-9203  
Fax 410-486-7415

97-2439

Jacob C. Handelsman, M.D.

2305 LOGAN ROAD • OWINGS MILLS, MARYLAND 21117

May 1991



Zoning Commissioner  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Case # 97-303 SPH & 303

Gentlemen:

We received notice of the pending hearing concerning Case # 97-303 SPH scheduled for 5/22/91. This letter submits our strong objection to the proposed H. Carter's request.

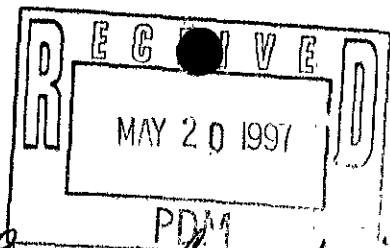
We have resided on Logan Road for 40 years in the immediate vicinity of Park Height Avenue in an area which would be adversely affected if this permission were granted. Traffic would increase and property values would suffer from the change to the residential character of this neighborhood. There is more than adequate space of the proposed type address available in this area.

Until now, the insistence on strict adherence to zoning regulations has been exemplary.

Respectfully yours,

Shirley Handelsman  
Jacob Handelsman

cc: Joan Koef, Jr.  
Care, Park Imp Assoc.



HARRIETT

KAPLAN

5/19/97

5/20/97

cg

Young Commission,

We are writing to protest strongly the request of Hi-Caliber Towing, Inc. to operate a towing and truck repair business in our neighborhood (case #

97-303-SPH (ITEM 303) We have lived here over twenty years and do not want to see this community ruined by the noise and mess from such a business. We are not able to attend the hearing on May 22<sup>nd</sup> but we really want our voice against this business to be



heard.

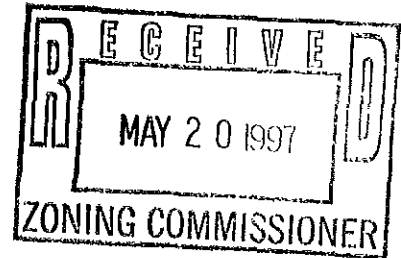
Sincerely,

Harriett + Mike Kaplan  
3124 Huntmaster Way  
Owings Mills, Maryland  
21117

Fax, 410-887-3468

Helene & Gene Berger12101 Hunting Tweed Drive  
Owings Mills, MD 21117

May 19, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson, Md. 21204

Re: Case # 97-303 SPH (Item 303)

Dear Zoning Commissioner:

We are strongly opposed to granting a Non-Conforming Use to operate a COMMERCIAL towing & auto & truck repair business at 12026-28 Park Heights Ave, Owings Mills, Md.

This area is a very pristine area & the sight & sound of tow trucks riding up & down Park Heights Ave would be very disturbing.

There are fewer & fewer peaceful areas left; please do not allow this one to be marred by broken-down trucks & cars on Park Heights Ave. We love our neighborhood & would love to have it remain beautiful & quiet.

Respectfully,  
Helene L. Berger  
Gene Berger

May 20, 1997

Zoning Commissioner  
County Office Building  
1111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Case Number 97-303 SPH (Item 303) - Hi-Caliber Towing, Inc.

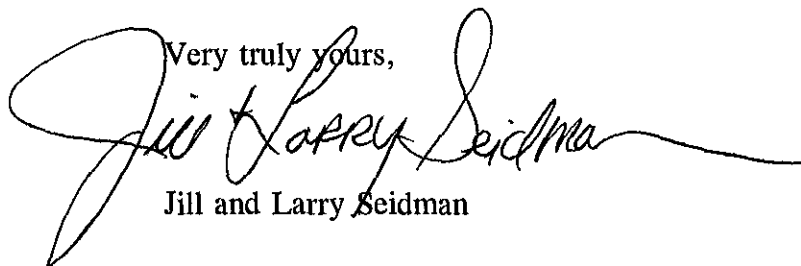
Dear Zoning Commissioner:

I am a resident in the Worthington Woodsyde community in Owings Mills, Maryland, and I am writing to express my opposition to Hi-Caliber Towing, Inc.'s request to operate a commercial towing and auto and truck repair business in our residential community. As you know, the property on which Hi-Caliber, Inc. seeks to operate its business is residentially zoned property and I understand that the property should not be granted any special conforming use given that the business operated at this location has not been continuous, and, in addition, I understand that the business which Hi-Caliber Towing, Inc. seeks to operate would be an expansion well beyond what was originally operated in this location.

Please take these factors into consideration in connection with your decision regarding the grant of a non-conforming use to Hi-Caliber Towing, Inc. It is not that we oppose this type of business, it is only that we oppose its operation in our backyard. Most of the residents in my community have moved away from the City to avoid the noise and commercialization. Please help us to preserve the character of our community.

Thank you very much for your consideration in connection with this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jill & Larry Seidman", with a long horizontal flourish extending to the right.

Jill and Larry Seidman

97-2536

TO: THE ZONING COMMISSIONER  
FROM: HOLLY PEARL  
RE: case # 97-303 sph item 303 ....HI-CALIBER TOWING  
DATE: 5/21/97

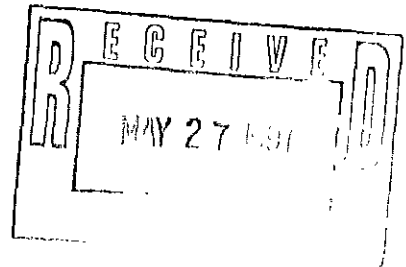
As I am unavailable to attend the hearing on May 22 so, I want to express my objection to Hi-Caliber Towing being granted zoning. I am strongly opposed to a commercial towing operation being located in my neighborhood. This letter is in protest of them operating their business at 12026-28 Park Heights Ave, Owings mills MD 21117.

This would be an unsightly loud nuisance and would have a negative effect on my property value. I sincerely hope you do not approve this zoning request.

Thank you,

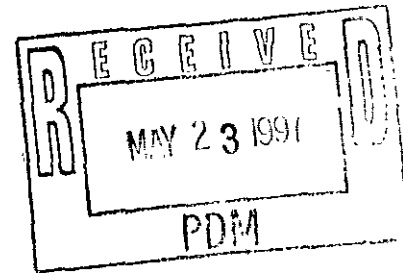


Holly Pearl  
Brian Feit  
2 Barnstable court  
Owings Mills MD 21117



97-2505

LAW OFFICE  
**ELLEN P. ROSENBERG, P.A.**  
THE PENTHOUSE  
28 W. ALLEGHENY AVENUE, SUITE 701  
TOWSON, MARYLAND 21204



TELEPHONE (410) 321-9610  
TELECOPIER (410) 321-9666

ELLEN P. ROSENBERG \*+

\* ALSO ADMITTED IN D.C.  
+ ALSO ADMITTED IN CALIFORNIA

May 21, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Avenue  
Towson, MD 21204

Re: 97-303 SPH (Item 303)  
Hi-Caliber Towing, Inc.

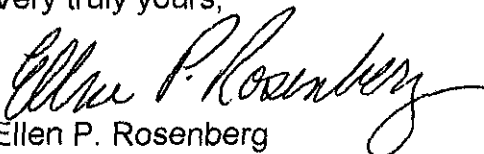
Dear Sir or Madam,

I have been alerted to the fact that Hi-Caliber Towing, Inc. is attempting to move into my community.

Please be advised that I wish to protest this commercial towing and auto and truck repair business in my community.

If you have any questions, please do not hesitate to contact me.

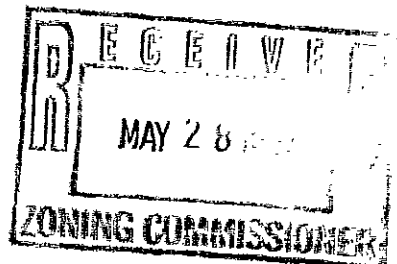
Very truly yours,

  
Ellen P. Rosenberg

EPR/lrs  
ellenper\letters/5/21

19504 Rock Mill Road  
Hampton, Md. 21074  
May 21, 1997

Mr. Lawrence Schmidt  
Zoning Commissioner  
400 Washington Ave, Room 112  
Lanham, Maryland 21074



Re: Case No. 97-3035PH (Item 303)

Dear Mr. Schmidt,

As the property owner at 11935 Park Heights Ave., Orange Mills, Md. 21117 since 1955, I am very much apposed & protest Hi-Caliber, Inc's request to operate a commercial towing & auto/truck repair business in my residential community. This has been a quiet neighborhood for many, many years and I will like to keep it that way.

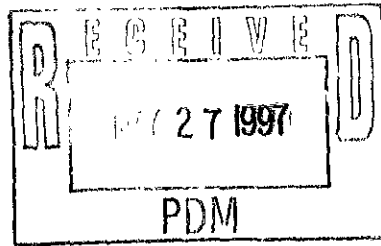
Sorry, I'm late in writing, but I just received the flyer on this & will be out of town on May 22<sup>nd</sup>, I did however, receive one notice, letter dated 2-13-97 from A. Johnson about a postponement earlier with a promise to notify of new hearing date. This notice was never received. Incidentally, the flyer was not from the county.

I thank you for your attention & expect you to respect my protest & opposition.

Yours truly,  
Doris L. Levente  
(AKA Doris Woodward)

410-239-8086

99-2537



3 Forest Bluff Court  
Owings Mills MD 21117  
May 20 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson MD 21204

Dear Sir/ Madam,

Please refer to case number 97-303 SPH (Item 303)

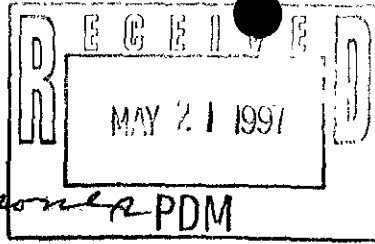
This letter is to inform you that we are indeed opposing and protesting Hi-Caliber, Inc. request to operate a commercial towing and auto and truck repair business in our residential community. We moved to this residential community to achieve a tranquil and exclusive environment. A towing operation including the unsightly storage and repair of broken down vehicles will serve to benefit only the owner of the business while disturbing the peace of the community and will also have a negative effect on the value of our home.

Sincerely

*R. Mark Ottley MD.*  
*Deborah Ottley*

Dr. and Mrs. R. Mark Ottley

97-2440



5/20/97

Zoning Commission  
County Office Bldg.  
111 W. Chesapeake Ave.  
Towson Md. 21204

Ref: 97-<sup>303</sup>303 SPH (Ann 303)

Gentlemen -

I am the resident of 12314 Park Heights Ave and am writing in opposition to the request of Hi-Caliber Towing to use 12026-28 Park Heights Ave. as a business address for their towing operation.

I am totally opposed to this request to issue a non-conforming variance for this address in our residential neighborhood.

Do not allow a variance for this location. It is not an address for such a commercial operation.

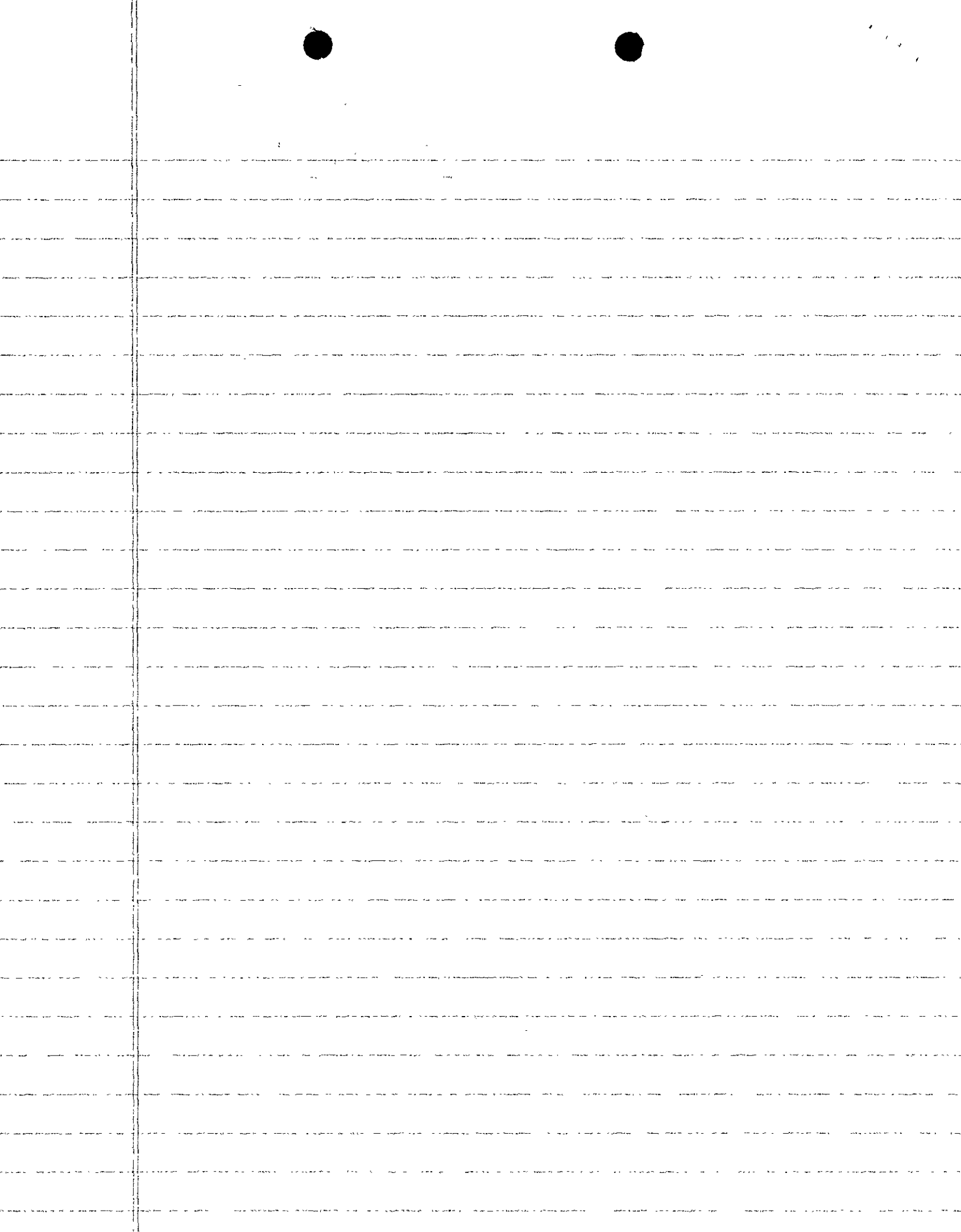
Thank you for your consideration.

Sincerely  
J. Travis Orth

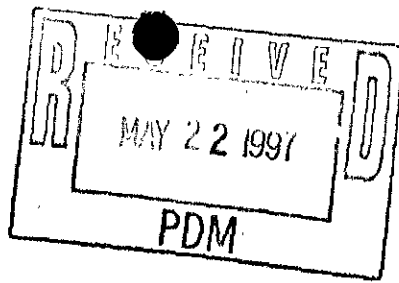
12314 Park Heights Ave.  
Cawings Mills Md. 21117

410-356-9314





97-24-71



Ellen Hess  
7 Hunters Horn Ct.  
Om, MD 21117-1505

Zoning Commissioner  
County Office Bldg.  
111 W. Chesapeake Ave.  
Towson, MD 21204

May 20, 1997

Re: case 97-303 SPH (Item 303)  
Hi-Caliber Towing Inc.

Dear Sir:

As a member of the Timber Valley community, I am totally opposed to the above request.

The peace of our community will be continuously disturbed by the sound of tow trucks traveling up and down the Park Heights corridor. Unsightly storage and repair of broken down vehicles will be an extreme detriment to our community, while only benefiting the owner of the business.

I oppose and protest Hi-Caliber, Inc's request to operate a commercial towing and auto and truck repair business in our residential community.

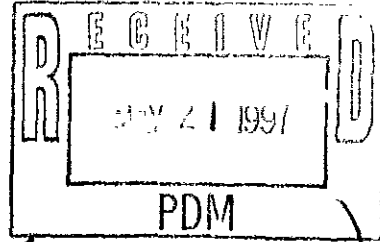
Very truly yours,

Ellen Hess

Zoning Commissioner  
County Office Bldg.  
111 W. Chesapeake Ave.  
Towson Md. 21204

5/19/97

97-2443



Ref. 97-3035PH (Item 303)

Gentlemen:

We are the resident & owners of 12314 Park Heights Ave. and are writing in opposition to Hi-Caliber Towing's request for permission to use 12026-28 Park Heights as a business address for their towing operation.

We are totally opposed to this request for a non-conforming variance to allow zoning in our residential neighborhood.

Do not allow a non-conforming variance for this location. It is a residential area - and not for commercial usage.

Sincerely

P. Albert Kuper III

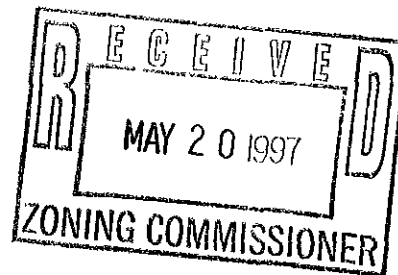
12314 Park Heights Ave.  
Owings Mills Md. 21117

410. 356-9314

**BALTIMORE COUNTY ZONING BOARD****TOWSON, MD 21204****RE. HI-CLIBER TOWING ZONING REQUEST**

PLEASE BE ADVISED THAT WE TOTALLY REJECT FOR THE RE-ZONING OF THIS PROPERTY ON PARK HEIGHTS AVE. WE LIVE IN A QUIET SUBURBAN AREA. ZONING CHANGE WILL ONLY BRING MORE TRAFFIC AND BLIGHT TO OUR AREA. THE STORAGE OF TOWED CARS AND THE NOISE FROM THE TRUCK REPAIR WILL ONLY ADD BLIGHT TO OUR NEIGHBORHOOD. IT IS UNNECESSARY TO HAVE SUCH A BUSINESS IN A RESIDENTIAL AREA. WE HAVE LIVE HERE FOR 21 YEARS AND HAVE YET TO FIND A NEED FOR SAME. WE URGE YOU TO VOTE AGAINST THIS ZONING CHANGE.

**K & S SACKI  
NANCY ELLEN WAY  
OWINGS MILLS, MD**



TO ZONING OFFICE TOWSON MD.

97-2976

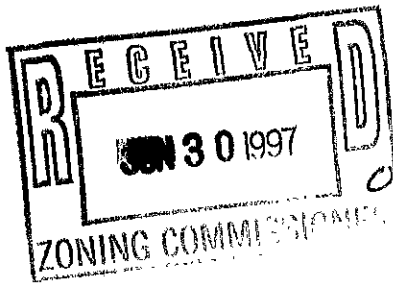
SIRS:

In Reference to the Hi Cileben  
AUTO + TRUCK

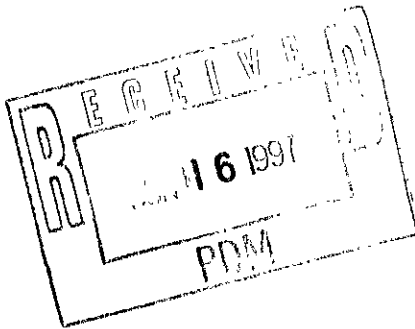
Case #97-303-SPH (item 303) Towing and repair business

to be located on Park Hts. Ave.  
in Owings Mills Md 21117

Our residence is located at 11939  
Park Hts Ave Please record



our objection to this business  
at this address



Francis J. McNabb - Patricia McNabb  
FRANCIS J. & PATRICIA McNABB

L.B.

F.Y.I.

11939 Park Hts. Ave.

phone 410 356 6236 THANK

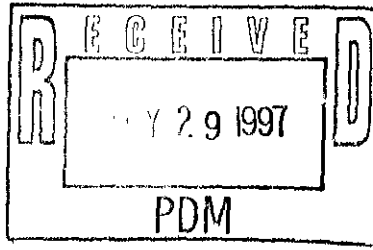
YOU FOR YOUR CONSIDERATION  
PLEASE EXCUSE THE POOR BALL  
POINT PENMANSHIP.

P.S. OUR MAIL BOX IS ON THE FAR SIDE  
OF THE ROAD I'M CONCERNED  
FOR MY WIFE AND MYSELF  
PICKING UP OUR MAIL - I'M  
DISABLING

97-2499

3208 Hunting Tweed Drive  
Owings Mills, Maryland 21117

Phone 410-363-1096



5/30/97  
TO GS  
file

May 18, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Avenue  
Towson, MD 21204

Dear Zoning Commissioner,

It has come to our attention that Hi-Caliber Towing, Inc. is requesting the Baltimore County Zoning Board to grant them a non-conforming use so that they may operate a commercial towing and auto and truck repair business on a residentially-zoned property located at 12026-28 Park Heights Avenue, Owings Mills, MD.

As residents of the nearby Huntington-Valley Crest neighborhood we feel that the presence of this type of business would continuously disturb the peace and tranquillity of the area. This area is a highly desirable place to live because there is no commercial traffic disturbing our community and all of the wild life surrounding our homes. The turmoil caused by the addition of tow trucks driving up and down Park Heights corridor all hours of the day and night will have a negative effect on our lives and the value of our property.

We feel that the request for case number 97-303 SPH (Item 303) should be denied so that the Park Heights corridor will continue to be a safe atmosphere for its human and animal inhabitants.

Sincerely,

*Shelley Ulman*  
*Joseph Ulman*  
Shelley and Joseph Ulman

Baltimore County  
Zoning Commissioner  
County Office Bldg

97-2429 5/18/97

Re: case number 97-303 SPH (Item 303)

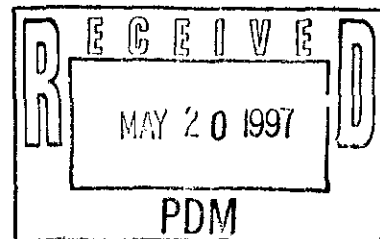
We are long time residents of the area.

And we are against opening of towing  
and truck repair business in our neighbourhood.  
There is no place for those businesses  
in our residential neighbourhood.

Leonid Raynes  
Rima Raynes  
Lana Raynes  
Zoya Raynes

#2 Houndstooth Ct.  
Owings Mills  
MO. 21117

tel. (410) 356-0990

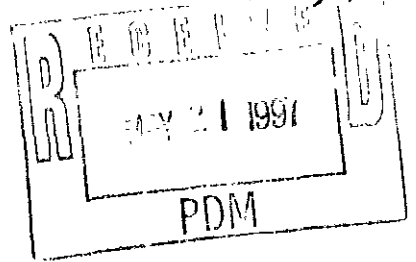


97-243

May 19, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson, MD. 21204

Mr. & Mrs. Gary Harris  
6 Chells St.  
Owing Mills, MD.  
21117



CASE # 97-303 SPH (#1211303)

Dear Commissioner,

I'd like to take this opportunity to write my opposition + protest to the request of "Hi-Caliber Townsg. Co." to operate a commercial zoning by in my neighborhood. The letter which I received states exactly why my family + neighbors would be opposed to such a request. Since I will be unable to attend the hearing I am writing you today to hopefully block this proposal.

The reason I moved to this area was for its "natural beauty" and non-commercialization. I would hope that far now and well into the future to keep it that way.

Yours truly  
Gary Harris



97-2472

SEARCHED	INDEXED
SERIALIZED	FILED
MAY 22 1997	
PDM	

LAW OFFICES  
OF  
**BLAINE L. GILBERT & ASSOCIATES, P.A.**  
COURT SQUARE BUILDING  
LOWER LEVEL SUITE  
200 EAST LEXINGTON STREET  
BALTIMORE, MARYLAND 21202

(410) 727-4970

May 19, 1997

FAX (410) 539-6440

Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Case No. 97-303SPH (Item 303)

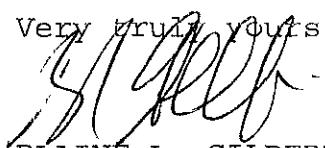
Dear Sir or Madam:

I wish to strongly oppose the request for a nonconforming use in the captioned case, which is located at 12026-28 Park Heights Avenue, Owings Mills, Maryland 21117. I am a resident in that immediate area having purchased a house and property at 2B Dorset Hill Court, Owings Mills, Maryland 21117, approximately 16 months ago. Prior to that time, I resided off of Old Court Road and moved because that area was becoming too commercial, industrial and noisy for a once-residential area.

There is absolutely no need to the community for a commercial towing/auto and truck repair business in my residential area.

Again, I strongly oppose the granting of a nonconforming use in the above case which is set for special hearing before you on Thursday, May 22, 1997 at 9:00 a.m.

Thank you for your consideration.

Very truly yours,  
  
BLAINE L. GILBERT

BLG/nlkm

97-2435

**Marlene and Dan Kessler**

3019 Susanne Court  
Owings Mills, MD 21117

May 21, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson, MD 21204

Case Number: 97-303 SPH (Item 303)

Dear Sir or Madam,

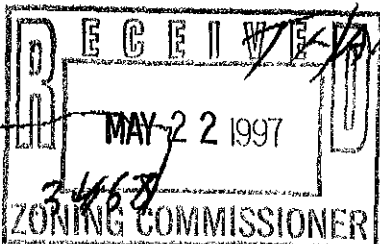
We live in the newest section of Worthington Woodsyde, our home is quite close to the corner of Park Heights and Walnut Avenues in Owings Mills. We cannot attend the hearing, so we are sending you this fax in strong opposition to proposed change in zoning.

Our neighborhood is a pleasant mix of rural and residential properties. Allowing commercial development here would surely adversely affect our neighborhood with increased traffic and noise. Furthermore, the nature of the business, a towing company, requires operation 24 hours a day. We have many small children and infants in our homes that do not need the disturbance of trucks travelling about our streets at all hours of the night. We have no nearby park. Our children usually play in the court. That is worrisome enough with the automobiles. Would you have us worry about tow trucks as well?

Sincerely,

Marlene and Dan Kessler

MR SCHMIDT - I AM APPALLED TO  
THE HI CALIBER TOWING OPERATION IN GENERAL,  
WHEN HE OPENED UP SEVERAL YEARS AGO - HE  
THEN IT WAS A ZONING VIOLATION, BUT  
HE BOUGHT THE PROPERTY AT THE TRYING  
TO FORCE US TO CONFORM! MY PROPERTY  
OUR LOOKS A BIG POND AND HIS PROPERTY.  
THE SIGHT OF CARS IN THE WOODS WILL COST  
ME MUCH \$ IN PROPERTY VALUE, NOISE, AND  
FURTHER TORMENT! WHY DID HE NOT  
KEEP THE LITTLE GAS STATION HE BOUGHT.  
PLEASE DON'T RUIN MY NEIGHBORHOOD!



T. For  
303 3468

THANKS FOR YOUR CONSIDERATION

SCOTT FRENKEL  
3115 WALNUT AVE  
MILL VALLEY, CA 94541

Mr. & Mrs. L. Berman  
7 Huntfield Ct.  
Owings Mills, MD 21117

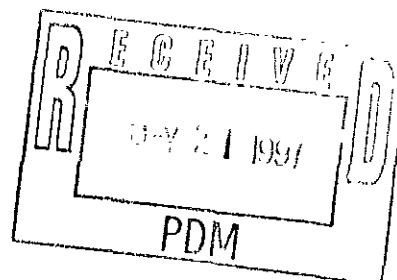
Zoning Commissioner  
County Office Building  
111 W. Chesapeake Ave.  
Towson, MD 21204  
Re: Case # 97-303 SPH (Item 303)

To Whom it May Concern:

We are writing in reference to Case # 97-303 SPH (303) regarding the request of High Caliber Towing, Inc. to get their residentially zoned property changed for commercial use by requesting a Non-Conforming Use exception. We strongly protest such an action and oppose the approval of their request. We are unable to attend the zoning hearing on Thurs., May 22, but want our voices heard. As residents of the Valley Hills community, which is adjacent to their property along Park Heights Ave., we are highly disturbed about their request to the zoning board. We chose to live in this community for the serenity and quiet wooded surroundings and as such, a commercial operation which would be towing and repairing trucks would greatly affect the peaceful surroundings. We would have to deal with increased noise and truck traffic along Park Heights Ave., a narrow and winding road, possible safety hazards from the truck traffic, as well as the decreased value of our properties and community as a desirable place to live. We urge you to reject their request and not grant them a permit to carry on a commercial truck business in a residential area.

Sincerely,

*Mr. & Mrs. L. Berman*  
Mr. & Mrs. L. Berman



Zoning Commisioner  
County Office Bldg.  
111 W. Chesapeake Ave.  
Towson, MD 21204

Reference: 97-303 SPH (Item 303)

Sir: This letter is in response and opposition to the granting of a **Non-Conforming Use** so that the Hi-Caliber Towing, Inc. would be allowed to operate a commercial towing and auto and truck repair business on their residentially-zoned property at 12026-28 Park Heights Ave, Owings Mills.

Why is it that quiet, pleasant and comfortable neighborhoods are being constantly threatened by offensive commercial establishments? Commerce is vital but has its place. Its place is surely not in the midst of residential environments. Our communities are a scant few miles from a major artery, Reisterstown Road, which is certainly close enough to the communities Hi-Caliber ostensibly wants to draw on.

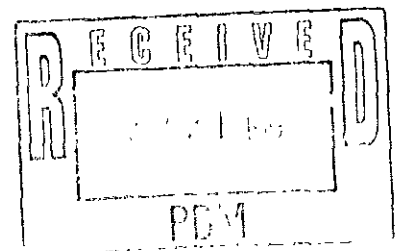
Moreover, the traffic such an establishment would induce is obviously undesirable. Trucks towing vehicles over Park Heights Ave. on the leg between Greenspring Valley Road and the garage would be a menace to safety. That stretch of Park Heights is narrow, hilly, and curvy. Therefore, I am confident that tow trucks on that route would contribute sorely to traffic problems.

Beyond the probability of physical damages such a facility would bring there is another form of mischief that will come along. There is also the matter of property values. One company, Hi-Caliber sees fit to locate there and derive whatever benefits it anticipates. But Hi-Caliber's advantage will be at the expense of the residents suffering a downgrading of property values. . . Hardly a fair tradeoff.

Hi-Caliber should not locate at this address. The sanctity of our neighborhood is at stake.

Sincerely,

*S. Sidney and Myrna Claire*  
S. Sidney and Myrna Claire  
3106 Huntmaster Way  
Owings Mills, MD 21117



Attention Commissioner of Zoning, May 22, 1997

This letter is to oppose the request of High-Caliber, Inc. as commercial towing and truck & auto repair business to operate in our residential community. The fact is it has been dormant for over a year, owned and operated as other 'business' including as Gas Station & has not been in legal operation. During the past year my husband, who owns a mortgage company in Baltimore, turned down the loan due to the fact that there were gas pumps on the property (saying it had been as gas station) & they are an environmental hazard. It was impossible for us to attend the hearing this morning but I hope my letter will help with the opposition to prevent High-Caliber, Inc. from operating in our area.

Respectfully,  
Diane J. Bakla

Worthington Woodsyde  
Homeowner

97-4019

**Worthington Woodsyde Association**

7 Woodsyde Place  
Owings Mills, Maryland 21117  
August 4, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Hearing on Hi-Caliber Towing Company

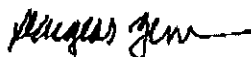
Dear Sir:

Again, the Worthington-Woodsyde Association, representing 99 families in the Worthington Valley, voices its opposition to the request for granting of a nonconforming use to Hi-Caliber Towing Company.

Our homeowners have watched with dismay the continuing saga surrounding the attempt by Hi-Caliber Towing Company to operate illegally at 12026-12028 Park Heights Avenue. Residents have presented testimony at hearings before the Zoning Board of Appeals as well as the Circuit Court of Baltimore County attesting to the absence of any business during the mid-1980's. Furthermore, community residents have testified that Hi-Caliber Towing Company has operated in disregard to the health and welfare of residential communities in the area. Flagrantly has this firm utilized its site for the unsightly storage of vehicles in differing states of disrepair, maintained an illegally parked platform towing truck on site, and fostered an unsafe facility in terms of access and egress onto Park Heights Avenue. The firm installed fencing about its property to hide their illegal activities and have responded to community concerns with the threat of intimidation.

We fervently request you to, once and for all, establish the fact that Hi-Caliber Towing Company is operating illegally and subsequently enforce the residential zoning regulations of Baltimore County. Your efforts would be greatly appreciated by all residents of the Worthington-Woodsyde community as well as others in the area.

Sincerely yours,



Douglas Zinn  
President

Worthington-Woodsyde Association

OPTIONAL FORM 90 (7-80)

**FAX TRANSMITTAL**

# of pages - 1

To	ZONING COMMISSIONER	From	DOUGLAS ZINN
Dep./Agency	BALTO. COUNTY GOV'T	Phone #	301-436-7000
Fax #	410-887-5708	Fax #	301-436-6668

NBN 7540-01-317-7388

5090-101

GENERAL SERVICES ADMINISTRATION



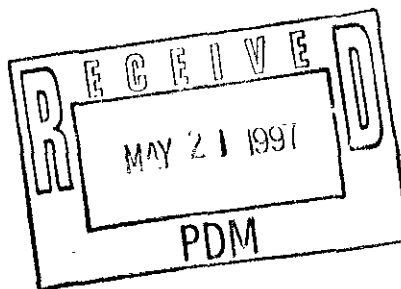
97-2438

Dear Sir,

Regarding case number 97-368 SPR  
(ITEM 307), I oppose and protest  
Hx Caliber Inc. request to operate a  
commercial towing and auto repair & truck  
repair business on residentially zoned  
property. Our peace of the community  
will be disturbed & it will have a  
negative effect on the value of our  
homes and properties. Please  
forbid this.

Sincerely,

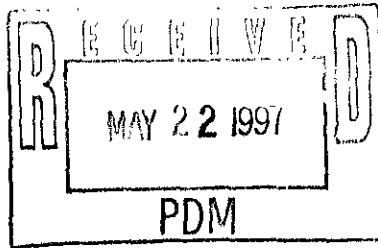
Mrs Mrs Herbert Guo  
12324 Park Heights Ave  
Curing Mills Md 21117



6/26/97	9:00	97-1923	FROST, R.	L. WASILEWSKI
		97-4049	HURLEY, E.	M. JOHNSON
		97-4086	MILLER, J.	M. JOHNSON
			(CODE AND ZONING HEARING)	
		97-5018	DEBUS, C. (ZONING)	M. JOHNSON
		97-4124	MULLINIX, N.	K. WOOD
		97-4160	MCGEE, E. AND M.	D. PROPALIS
7/8/97	9:00	97-4809	FOSTER, E. AND J.	J. CHEN
		97-6186	CHESAPEAKE VILLAGE (SERVE ON LAURA KARLL)	R. WISNOM
		97-1863	SCHMIDT, F.	D. TAYLOR
		97-3004	HALL, W. (SERVE ON J. BENNETT)	J. SCHRACK
		97-6084	TOWSON MARKET PLACE (SERVE ON M. POER, CO.)	G. FREUND
		97-6203	DAVENPORT, JR., C.J.	N. JONES
		97-5031	ARMSTRONG, R. & C.	H. ROWE
		97-4130	303 ROLLING RD. PARTNSP.	C. MCGRAW

REVISED 5/21/97

97-2470



Mr. and Mrs. Martin Sitnick  
3104 Huntmaster Way  
Owings Mills, Md 21117

Zoning Commisioner  
County Office Building  
Towson, Md  
21204

Re: 97-303 SPH (Item 303)

Commissioner:

We are writing to express our opposition to the towing and truck repair business proposed by Hi-Caliber, Inc., to be located in our quiet residential neighborhood, along the Park Heights Ave. corridor in the Worthington Valley.

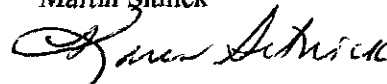
The pragmatic reasons for our opposition are as follows:

- (1) The property as it has existed for the last 20 years is an eye sore that has never been properly taken care of largely because the various businesses that have occupied the space have always failed. Lack of profits in a commercial enterprise necessarily impact the manner in which the physical plant is kept. A residential area should not be subject to the whims of the market place and the entrepreneurial talent of a businessman in maintaining its appearance and property values.
- (2) The various businesses that have located at the site have failed because the population surrounding the site will not support this type of commercial activity in the neighborhood.
- (3) The highest and best use for this property (the site) is residential. Residential property is relatively liquid in the Worthington Valley and commands significant sums per acre. The site has never acquired any value as a commercial enterprise as every business that has attempted operation in the last 20 years has failed. There have been at least four such failures.
- (4) The site is surrounded by a white collar residential area with homes valued at \$200,000 to \$1,000,000. The zoning commision cannot justify jeopardizing such value to accomodate a business that is unlikely to succeed and would most assuredly have better commercial potential in a commercial area.

Sincerely,

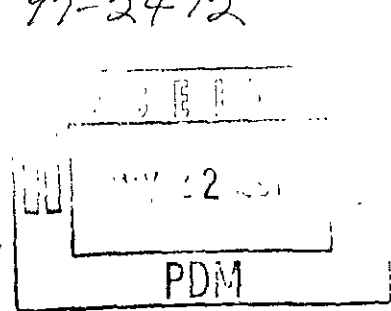


Martin Sitnick



Karen Sitnick

LAW OFFICES  
OF  
**BLAINE L. GILBERT & ASSOCIATES, P.A.**  
COURT SQUARE BUILDING  
LOWER LEVEL SUITE  
200 EAST LEXINGTON STREET  
BALTIMORE, MARYLAND 21202



(410) 727-4970

May 19, 1997

FAX (410) 539-6440

Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Case No. 97-303SPH (Item 303)

Dear Sir or Madam:

I wish to strongly oppose the request for a nonconforming use in the captioned case, which is located at 12026-28 Park Heights Avenue, Owings Mills, Maryland 21117. I am a resident in that immediate area having purchased a house and property at 2B Dorset Hill Court, Owings Mills, Maryland 21117, approximately 16 months ago. Prior to that time, I resided off of Old Court Road and moved because that area was becoming too commercial, industrial and noisy for a once-residential area.

There is absolutely no need to the community for a commercial towing/auto and truck repair business in my residential area.

Again, I strongly oppose the granting of a nonconforming use in the above case which is set for special hearing before you on Thursday, May 22, 1997 at 9:00 a.m.

Thank you for your consideration.

Very truly yours,

BLAINE L. GILBERT

BLG/nlkm

Hi- Caliber Tool & Auto Ltd  
CASE # 97 303 SPH (410) 833-2886 CONTACT (Evan Shifren)  
12026 PARK Heights  
Owings Mills Md 21117 C-98-5683

## PETITION FOR JUDICIAL REVIEW

PLEASE NOTE AN APPEAL FROM THE DECISION OF THE  
Zoning BOARD MAY 6, 1998 FOR EVIDENCE THAT WAS NOT  
LOOKED AT TO (SHIFT THE BURDEN OF PROOF) FACTUAL DOCUMENTATION  
OF OMISSION BY THE STATE COMPTROLLER'S OFFICE (TAX DIVISION)  
THAT EVIDENCE DID NOT EXIST WHEN IT ACTUALLY DID CONFLICT  
OF INTEREST BASED ON A surprise in law ~~that~~ WE COULD NOT  
OF GUARDED AGAINST IT. C/

PLEASE FILE THE PETITION FOR JUDICIAL REVIEW - FOR INSTANT  
JUSTICE ON THE CASE THE ADDRESS IS WRONG NOT 12026 IT IS  
12028 PARK HEIGHTS AVE FOR THE COMMERCIAL BUSINESS

12026 IS A RESIDENCE  
RELIEF FROM A JUDGMENT

Thank  
you

Evan Shifren

Case: 93-C-98-005683  
CF-Civil Fili  
TOTAL \$80.00  
Receipt #199800010937  
Cashier: KK CCBACX081  
06/05/98 1:23pm

RECEIVED AND FILED  
58 JUL -5 PM 1:26

98 JUL 21 PM 1:59  
RECEIVED  
COURT BOARD OF APPEALS

2026 & 28 PARK HEIGHTS AVE  
OWINGS MILLS MD 21117

*[Handwritten signature]*

Baltimore County  
Zoning Commissioner  
County Office Bldg

97-2429 5/18/97

Re: case number 97-303 SPH (Item 303)

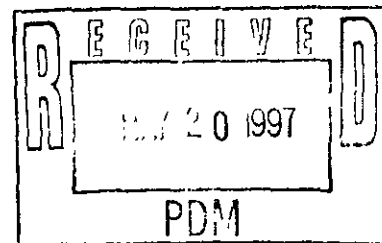
We are long time residents of the area.

And we are against opening of towing  
and truck repair business in our neighbourhood  
There is no place for those businesses  
in our residential neighbourhood.

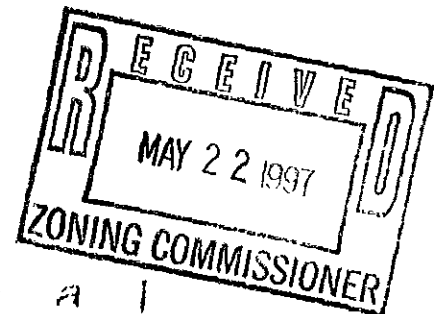
Leonid Raynes  
Rima Raynes  
Lana Raynes  
Zoya Raynes

#2 Houndstooth Ct.  
Owings Mills  
MO. 21117

tel. (410) 356-0990



Wilen Management Corporation  
2360 West Joppa Road - Suite #226  
Lutherville, MD 21093  
1-410-339-7800  
Fax: 1-410-321-7834



fax

t r a n s m i t t a l

to: ZONING COMMISSIONER - BALTO. C.

fax: 410-687-3468

from: Jaimes Wilen, PRESIDENT

date: May 21, 1997

re: Case # 97-303 SPH (Item 303)

pages: 2, including cover sheet.

NOTES:

PLEASE CALL THE NUMBER ABOVE IF YOU DO NOT RECEIVE  
ALL PAGES OF THIS TRANSMITTAL.  
THANK YOU.

May 21, 1997

Zoning Commissioner  
County Office Building  
111 W. Chesapeake Avenue  
Towson, MD 21204

RE: Case #97-303 SPH (Item 303)

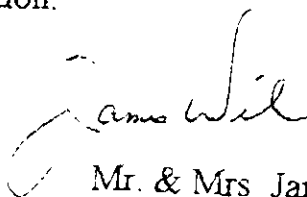
Dear Commissioner:

As a resident of a community located near the property in question on Park Heights Avenue, we strongly oppose the request to "Re-open" this parcel as a commercial towing and vehicle repair business.

The property has been a relatively dormant gas station for years with little activity. The area, while once rural, is now predominantly a community of well maintained single family homes. Allowing a tow truck operator to run as a full scale commercial business from this location will certainly disrupt the serenity that homeowners in the area have come to enjoy.

Highly commercial businesses should be located in commercial areas. We hope you will render your decision with this in mind.

Many thanks for your consideration.



Mr. & Mrs. James Wilen  
3 Carolyn Court  
Owings Mills, MD 21117  
410-356-1234



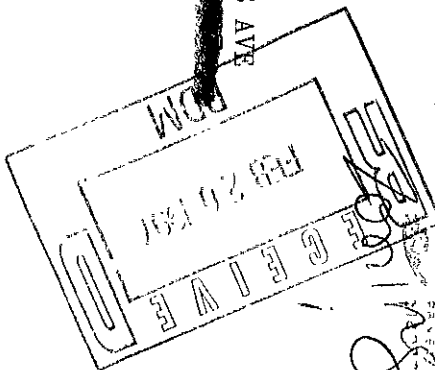


Baltimore County  
Department of Permits and  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

97-303

*[Handwritten signature]*

MS DORIS WOODWARD  
11935 PARK HEIGHTS AVE  
OWING, MD 21118



MICROFILMED



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

January 31, 1997

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-303-SPH (Item 303)  
12026-28 Park Heights Avenue  
W/S Park Heights Avenue, 1650' +/- S of c/l Walnut Avenue  
4th Election District - 3rd Councilmanic  
Legal Owner(s): Evan M. Shifren  
Contract Purchaser: Hi-Caliber Towing, Inc.

Special Hearing to approve a valid nonconforming fuel service station with accessory vehicle repairs; to determine whether the fuel service station uses have been abandoned; and to determine whether Baltimore County has followed the administrative procedures to require the cessation of business activities pursuant to Section 405.7E.

HEARING: TUESDAY, FEBRUARY 25, 1997 at 2:00 p.m. in Room 106, County Office Building.

A handwritten signature in black ink, reading "Arnold Jablon".

Arnold Jablon  
Director

cc: Evan M. Shifren/Hi-Caliber Towing, Inc.  
Julius W. Lichter, Esq.

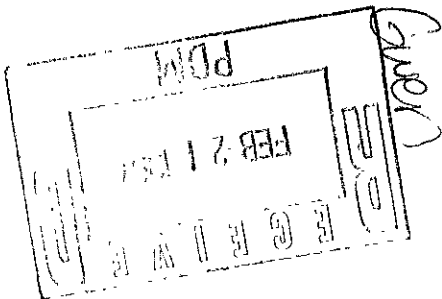
NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 10, 1997.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





Baltimore County  
Department of Permits and  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

MR LEE SHPRITZ  
3 HUNT VALLEY CT



MICROFILMED



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

February 13, 1997

Julius W. Lichter, Esq.  
Levin & Gann  
305 W. Chesapeake Avenue  
Towson, Maryland 21204


Dear Mr. Lichter:

Re: CASE NUMBER: 97-303-SPH  
PETITIONER(S): Hi Caliber Towing/Shifren  
LOCATION: 12026 Park Heights Avenue

The above matter, previously assigned to be hearing on February 25, 1997 has been postponed at the request of Michael D. Vogelstein, attorney for the protestants.

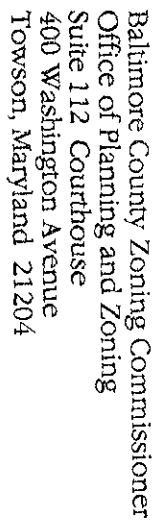
Please be advised that if the property must be posted giving notice of the postponement.

Notification of the new hearing date will be forwarded shortly.

  
Arnold Jablon  
Director

cc: Michael D. Vogelstein, Esq.  
Evan M. Shifren/Hi-Caliber Towing, Inc.  
Carl and Pat Nathanson  
Douglas Zinn/Worthington-Woodsyde Association  
Paula Houck/Executive Office  
Councilman S. Bryan McIntire  
Lee Shpritz  
Art Brown  
James Seal  
Mary Fitchett  
Stanton Wingrat  
Eugene Reynolds  
Janet Trott  
Doris Woodward  
Myron Werba  
Valleys Planning Council





Baltimore County Zoning Commissioner  
Office of Planning and Zoning  
Suite 112 Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

Will and Larry Seidman  
Worthington Woodsyde Community

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MICROFILMED

Printed with Soybean Ink

212504/4510

[illegible]



Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

June 3, 1997

Julius Lichter, Esquire  
Levin and Gann  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204

Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
Contract Purchaser: Hi Caliber Towing  
Legal Owner: Evan Shifren  
Property 12026-28 Park Heights Avenue  
Case No. 97-303-SPH

Dear Counsel:

Pursuant to the ruling made in open hearing regarding the above matter, kindly be advised that this case has been continued from its scheduled hearing date of May 22, 1997. The case has been reset to Wednesday, August 6, 1997 at 9:00 A.M. I fully anticipate that the new Zoning Commissioner's Hearing Room, Room 407, located on the 4th floor of the County Courts Building (401 Bosley Avenue) will be completed by that time. Thus, a hearing will be conducted in that room. If unexpected delays necessitate that the hearing be held elsewhere, same will be conducted in Room 118 of the Old Court House.

Also, as discussed after the abbreviated hearing on May 22, 1997, counsel will be afforded the opportunity to submit pre-trial memorandum. I suspect that those memorandum may discuss the impact of the Order issued by John F. Fader, III, Judge of the Circuit Court for Baltimore County on December 28, 1995 in case No. 93-442-SPH. Any memoranda which counsel wish to submit should be offered on or before the close of business on Friday, July 11, 1997.

Please do not hesitate to contact me should you have any questions regarding the above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

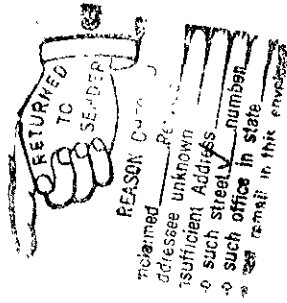
LES:mmn

c: Protestants on Sign-in Sheet and letters received  
in opposition as of May 28, 1997.





Baltimore County Zoning Commissioner  
Office of Planning and Zoning  
Suite 112 Courthouse  
400 Washington Avenue  
Towson, Maryland 21204



Doris L. Quante  
19504 Rock Mill Rd.  
Hampstead, Md. 21074

PRESORTED 006-06-97 BALTO MD 212  
MICROFILM

006-06-97 BALTO MD 212

006-06-97 BALTO MD 212



Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

June 3, 1997

Julius Lichter, Esquire  
Levin and Gann  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204

Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
Contract Purchaser: Hi Caliber Towing  
Legal Owner: Evan Shifren  
Property 12026-28 Park Heights Avenue  
Case No. 97-303-SPH

Dear Counsel:

Pursuant to the ruling made in open hearing regarding the above matter, kindly be advised that this case has been continued from its scheduled hearing date of May 22, 1997. The case has been reset to Wednesday, August 6, 1997 at 9:00 A.M. I fully anticipate that the new Zoning Commissioner's Hearing Room, Room 407, located on the 4th floor of the County Courts Building (401 Bosley Avenue) will be completed by that time. Thus, a hearing will be conducted in that room. If unexpected delays necessitate that the hearing be held elsewhere, same will be conducted in Room 118 of the Old Court House.

Also, as discussed after the abbreviated hearing on May 22, 1997, counsel will be afforded the opportunity to submit pre-trial memorandum. I suspect that those memorandum may discuss the impact of the Order issued by John F. Fader, III, Judge of the Circuit Court for Baltimore County on December 28, 1995 in case No. 93-442-SPH. Any memoranda which counsel wish to submit should be offered on or before the close of business on Friday, July 11, 1997.

Please do not hesitate to contact me should you have any questions regarding the above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.


LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmm

c: Protestants on Sign-in Sheet and letters received  
in opposition as of May 28, 1997.






 Baltimore County  
 Department of Permits and  
 Development Management  
 111 West Chesapeake Avenue  
 Towson, Maryland 21204

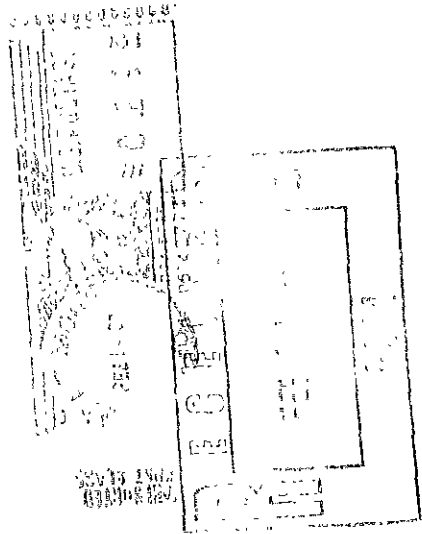
MS JANE TROTT  
 12022 PARK HEIGHTS AVE  
 OWINGS

211171016 1895 02/19/97  
 TIME M  
 EXP RTN TO SEND ST 10  
 FORWARD  
 TROTT EDWARDS MILL DR  
 8803 GROFFES MD 21117-4854  
 OWINGS MILLS  
 RETURN TO SENDER

8803 21117 4854

Printed with Soybean Ink

MICROFILMED



111171016 1895 02/19/97



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

February 13, 1997

Julius W. Lichter, Esq.  
Levin & Gann  
305 W. Chesapeake Avenue  
Towson, Maryland 21204

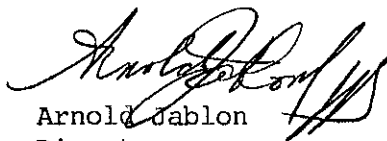
Dear Mr. Lichter:

Re: CASE NUMBER: 97-303-SPH  
PETITIONER(S): Hi Caliber Towing/Shifren  
LOCATION: 12026 Park Heights Avenue

The above matter, previously assigned to be hearing on February 25, 1997 has been postponed at the request of Michael D. Vogelstein, attorney for the protestants.

Please be advised that if the property must be posted giving notice of the postponement.

Notification of the new hearing date will be forwarded shortly.

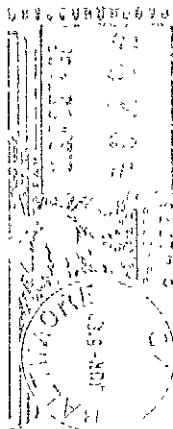
  
Arnold Jablon  
Director

cc: Michael D. Vogelstein, Esq.  
Evan M. Shifren/Hi-Caliber Towing, Inc.  
Carl and Pat Nathanson  
Douglas Zinn/Worthington-Woodsyde Association  
Paula Houck/Executive Office  
Councilman S. Bryan McIntire  
Lee Shpritz  
Art Brown  
James Seal  
Mary Fitchett  
Stanton Wingrat  
Eugene Reynolds  
Janet Trott  
Doris Woodward  
Myron Werba  
Valleys Planning Council

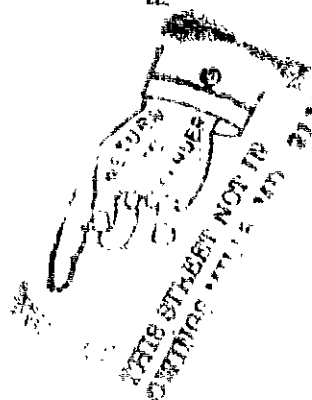




Baltimore County Zoning Commissioner  
Office of Planning and Zoning  
Suite 112 Courthouse  
400 Washington Avenue  
Towson, Maryland 21204



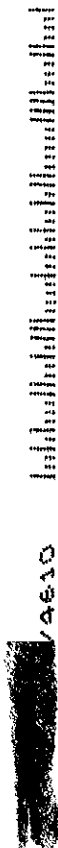
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REPRODUCTION



PRESORTED \*86-86-97 BALTO MD 212

Mr. and Mrs. Gary Shapiro  
6 Wells Court

MICROFILMED





Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

June 3, 1997

Julius Lichter, Esquire  
Levin and Gann  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204

Michael D. Vogelstein, Esquire  
201 N. Charles Street, Suite 801  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
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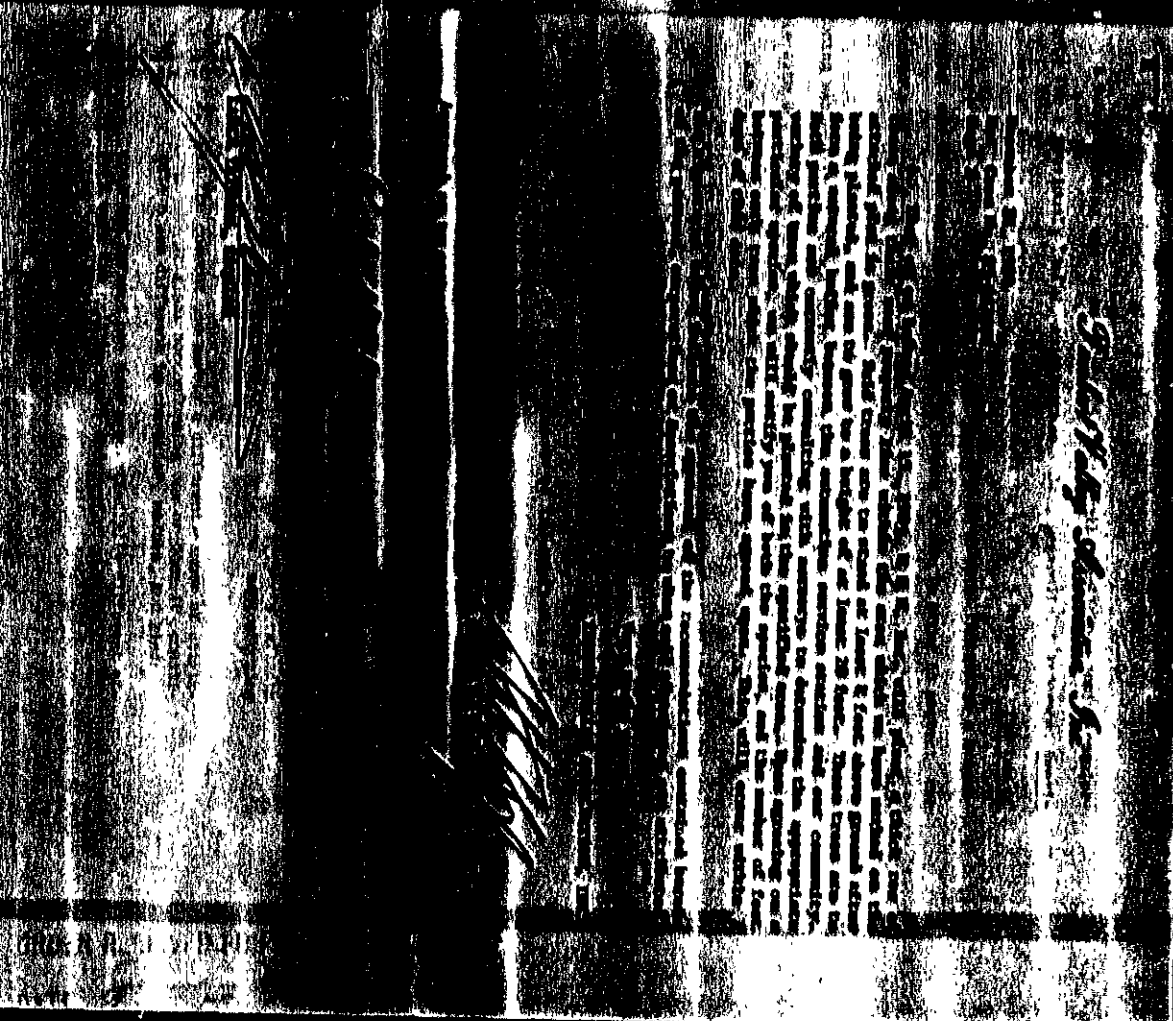
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LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn

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in opposition as of May 28, 1997.





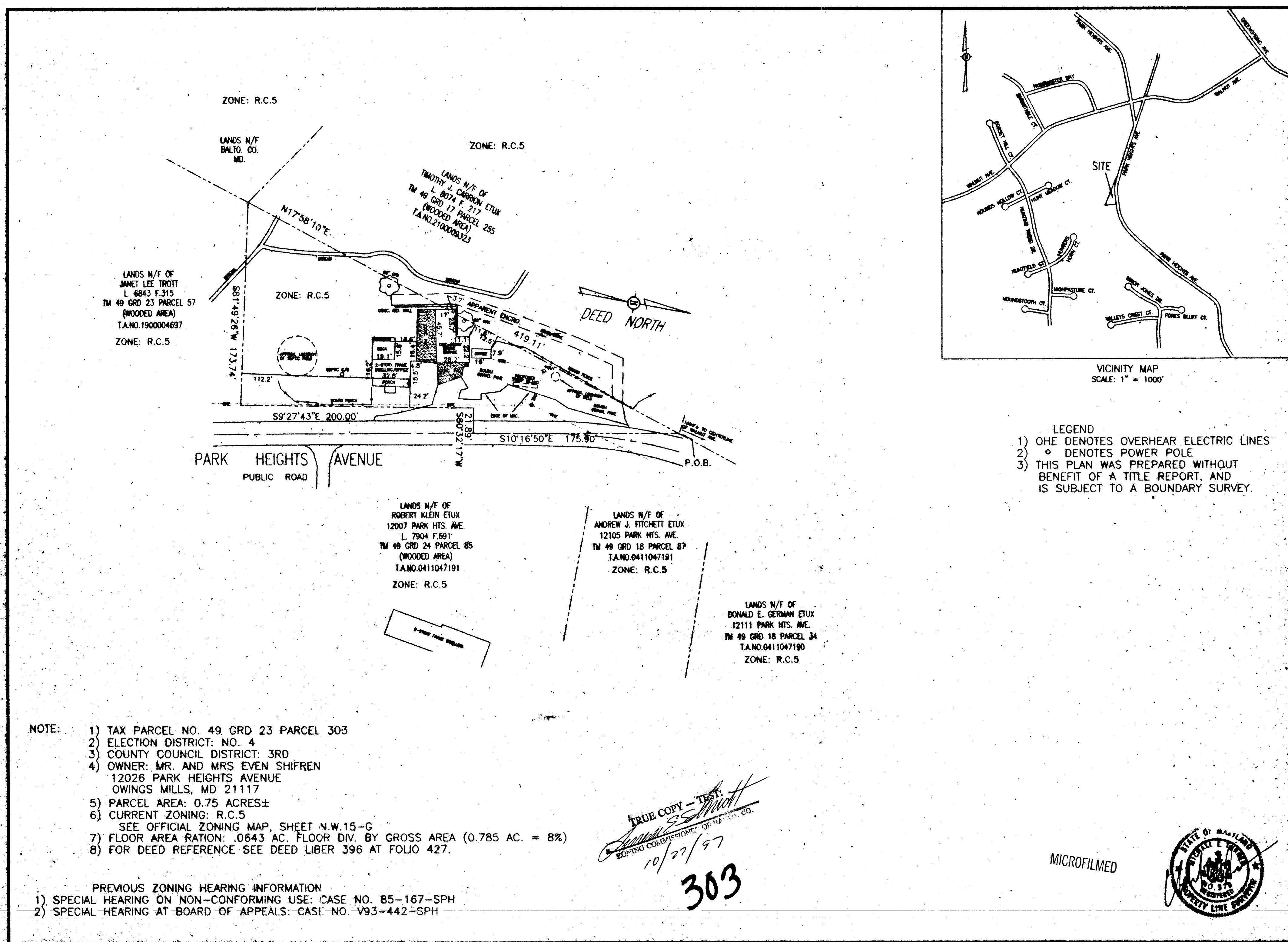






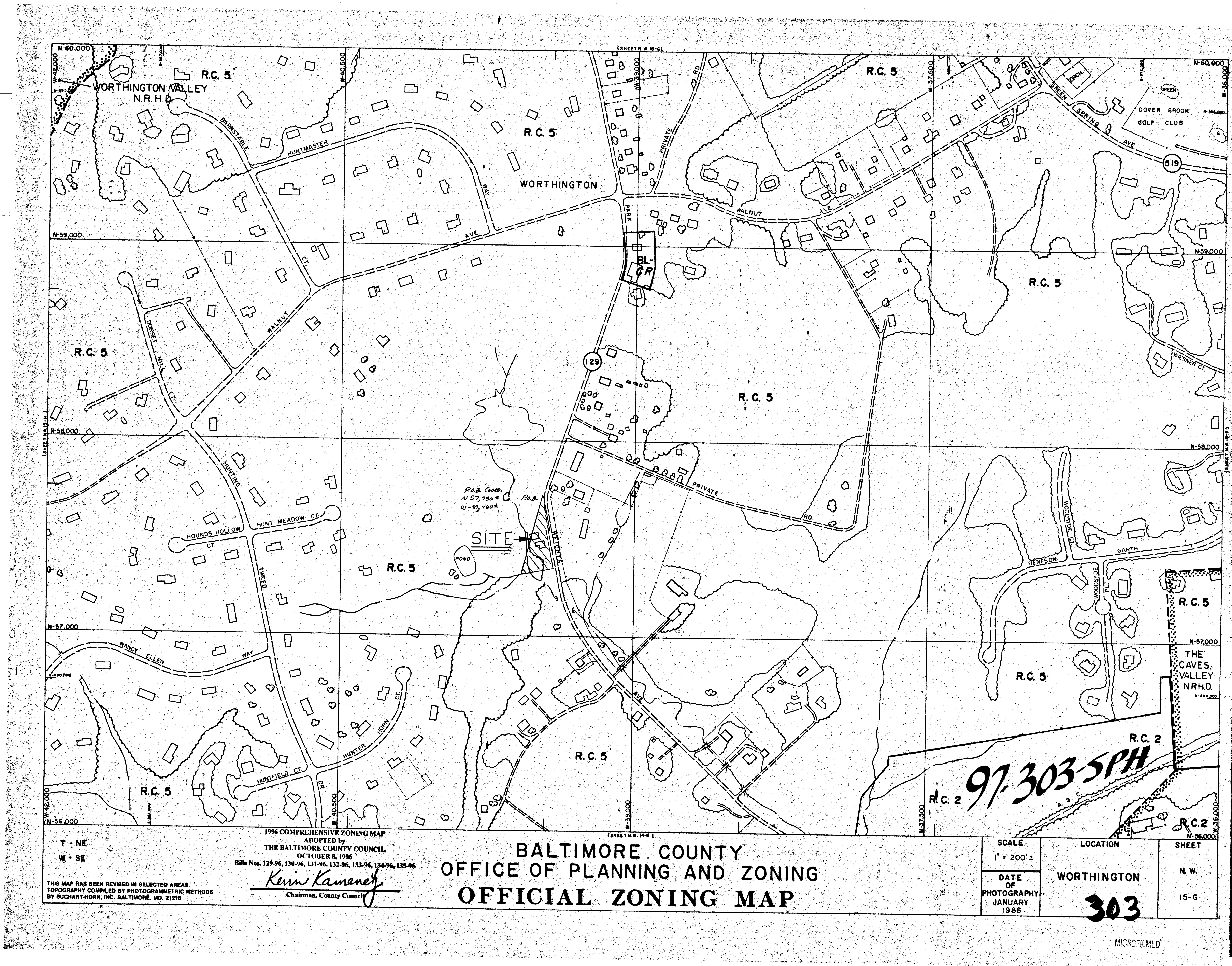




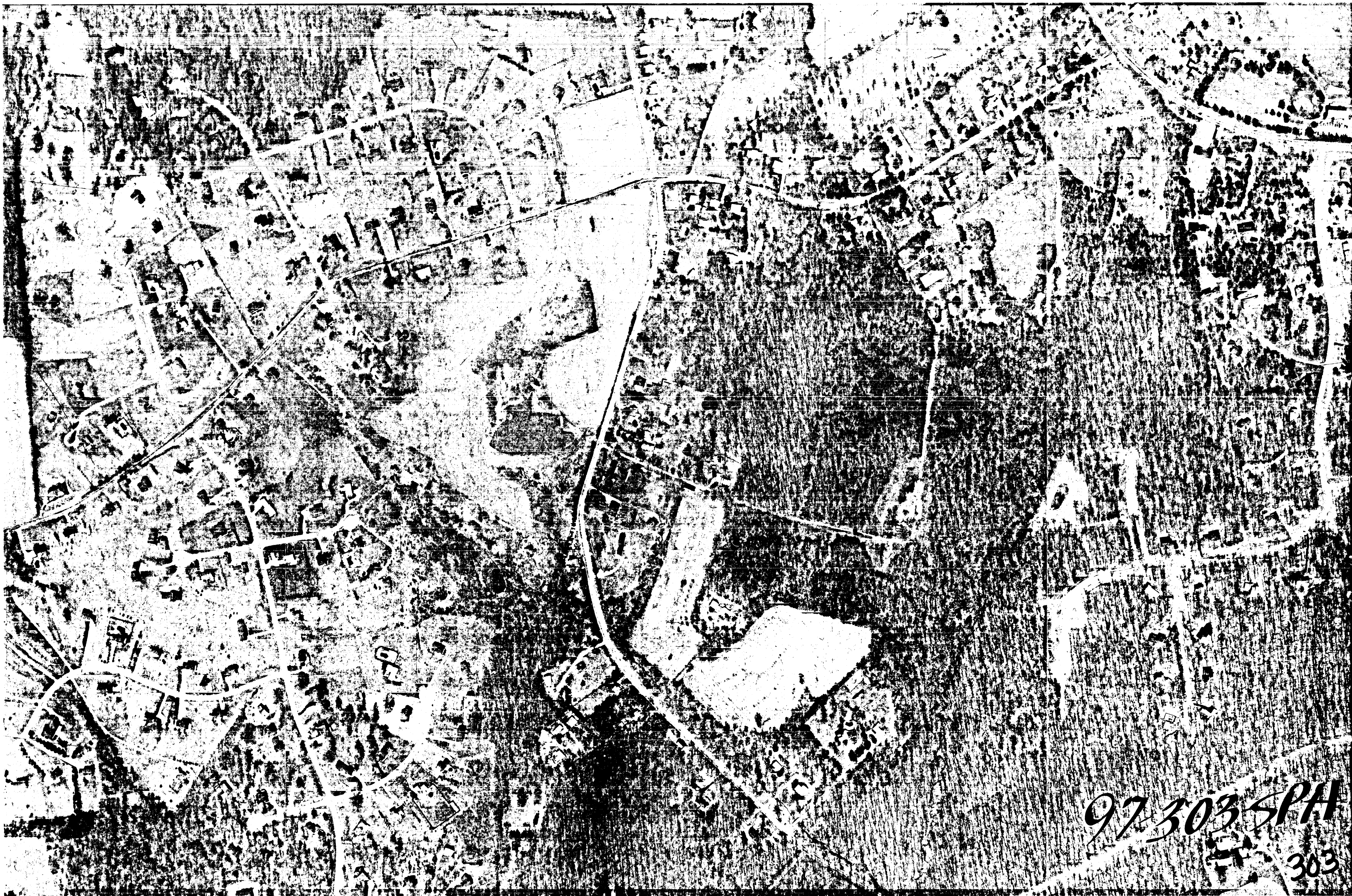


<b>RBA</b> ENGINEERS • SURVEYORS • PLANNERS 12026 PARK HEIGHTS AVENUE, SUITE 200 OWINGS MILLS, MARYLAND 21117 PHONE: 410.833.2285	PLANS PREPARED FOR <b>MR. AND MRS. EVAN SHIFREN</b> 12026 PARK HEIGHTS AVENUE OWINGS MILLS, MARYLAND 21117 PHONE: 410.833.2285	PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING TO CONFIRM A NON-CONFORMING USE	SHEET TITLE: SHEET ONE OF ONE	REVISIONS	DATE: 01/25/97
				BY: [Signature]	BY: [Signature]









BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.  
MARTINSBURG, W.V. 25401

SCALE	LOCATION	SHEET
1" = 200' ±	WORTHINGTON	NW 15-G MICROFILMED
DATE OF PHOTOGRAPHY JANUARY 1986		

MICROFILMED